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100TH CONGRESS
1st Session

SENATE

REPORT
100-215

OMNIBUS VETERANS' BENEFITS AND SERVICES ACT OF 1987

REPORT

OF THE

COMMITTEE ON VETERANS' AFFAIRS

UNITED STATES SENATE

TO ACCOMPANY

S. 9

together with

ADDITIONAL AND MINORITY VIEWS

NOVEMBER 6, 1987.—Ordered to be printed

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Calendar No. 432

100th Congress
1st Session

SENATE

Report
100-215

OMNIBUS VETERANS' BENEFITS AND SERVICES ACT OF 1987

November 6, 1987.—Ordered to be printed

Mr. Cranston, from the Committee on Veterans' Affairs, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 9]

The Committee on Veterans' Affairs, to which was referred the bill (S. 9) to amend title 38, United States Code, to increase the rate of disability compensation and dependency and indemnity compensation for veterans and survivors; to provide additional eligibility for certain educational or rehabilitation assistance to veterans and other individuals with drug or alcohol abuse disabilities; to increase the maximum amount of a home loan which is guaranteed by the Veterans' Administration; to improve housing, automobile, and burial assiatance programs for service-disabled veterans; and to extend and establish certain exemptions from sequestion for certain veterans' benefits; and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a committee substitute and an amendment to the title, and recommends that the bill, as amended, do pass.

Committee Amendments

The amendments are as follows:

Strike out all after the enacting clause as follows:

[SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

[(a) This Act may be cited as the "Service-Disabled Veterans' Benefits Improvement Act of 1987".

[(b) Except as otherwise expressly provided, whenever provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

[SEC. 2. DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASES.

[(a) IN GENERAL.—(1) The Administrator of Veterans' Affairs shall, as provided in paragraph (2), increase, effective December 1, 1987, the rates of and limitations on Veterans' Administration disability compensation and dependency and indemnity compensation.

[(2)(A) In the case of each of the rates and limitations in sections 314, 315(1), 362, 411, 413, and 414 of title 38, United States Code, that were increased by amendments made by title I of the Veterans' Compensation Rate Increase and Job Training Amendments of 1985 (Public Law 99-238), the Administrator shall further increase such rates and limitations, as in effect on November 30, 1987, by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1987, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

[(B) In the computation of increased rates and limitations pursuant to subparagraph (A), amounts of $0.50 or more shall be rounded to the next higher dollar amount and amounts of less than $0.50 shall be rounded to the next lower dollar amount.

[(b) SPECIAL RULE.—The Administrator may adjust administratively, consistent with the increases made under subsecttion (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

[(c) PUBLICATION REQUIREMENT. At the same time as the matters specified in section 215(i)(2)(D)) of the Social Security Act (42 U.S.C. 415(i)(2)(D) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1988, the Administrator shall publish in the Federal Register the rates and limitations being increased under this section and the rates and limitations as so increased.

[SEC. 3. SPECIALLY ADAPTED HOUSING ASSISTANCE.

[(a) INCREASE IN MAXIMUM GRANTS.—Section 802 is amended—

[(1) in subsection (a), by striking out "$35,500" and inserting in lieu thereof "$40,000"; and

[(2) in subsection (b), by striking out "$6,000" and inserting in lieu thereof "$6,775".

[(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1987.

[SEC. 4. SERVICE-CONNECTED DEATH BENEFITS.

[(a) INCREASE IN MAXIMUM BURIAL AND FUNERAL EXPENSES AWARD.—Section 907 is amended by striking out "$1,000" and inserting in lieu thereof "$2,500".

[(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on October 1, 1987.

[SEC. 5. TOLLING EDUCATIONAL AND REHABILITATION ASSISTANCE DELIMITING PERIODS BY REASON OF INCAPACITY DUE TO DRUG OR ALCOHOL CONDITIONS.

[(a) EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE ALL-VOLUNTEER FORCE.—Section 1431(d) is amended—

[(1) by inserting "(1)" before "In";

[(2) by inserting at the end the following new paragraph:

["(2)(A) A condition referred to in paragraph (1) of this subsection is an alcohol or drug dependence or abuse condition of an eligible individual in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

["(i) suich individual has received recognized treatment or participated in a program of rehabilitation for the condition, and

["(ii) the condition is sufficiently under control to enable such individual to pursue such individual's chosen program of education under this chapter.

["(B)(i) Notwithstanding the provisions of paragraph (1) of this subsection, an eligible individual's application for an extension of the ten year period for use of entitlement under this chapter because of such a condition may be granted if such individual files an application for the extension not later than one year after whichever of the following last occurs:

["(I) The last date of the delimiting period otherwise applicable under this section.

["(II) The termination of the last period of such treatment or such program of rehabilitation.

["(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

["(ii) The period of time during which, based on the existence of such a condition, such ten-year period does not run shall not exceed the lesser of—

["(I) the period during which the eligible individual was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as such individual demonstrates, to the satisfaction of the Administrator, that such individual was prevented by the condition from initiating or compleating such program of education, or

["(II) four years.

["(iii) When such an extension is granted, the ten-year period with respect to such individual will again begin running on whichever of the following first occurs—

["(I) the first day, following the condition becoming sufficiently under control to enable such individual to pursue such individual's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with such regulations, for such individual to initiate or resume pursuant of a program of education with educational assistance under this chapter, or

["(II) the day after the fourth year of the extension.".

[(b) PROGRAMS OF REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES.—Section 1503(b)(1) is amended—

[(1) by inserting "(A)" before "In";

[(2) by inserting "(other than a condition described in subparagraph (B)(ii) of this paragraph)" after "medical condition" in subparagraph (A), as so redesignated; and

[(3) by inserting at the end the following new subparagraph:

["(B)(i) Subject to clauses (iii) and (iv) of this subparagraph, in any case in which the Administrator determines, under regulations which the Administrator shall prescribe, that a veteran has been prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because a condition described in clause (ii) of this subparagraph made it infeasible for the veteran to participate in such a program, the twelve-year period of eligibility shall not run during the period of time that the veteran was so prevented from participating in such a program.

["(ii) A condition referred to in clause (i) of this subparagraph is an alcohol or drug dependence or abuse condition of a veteran in a case which it is determined, under regulations which the Administrator shall prescribe, that—

["(I) the veteran has received recognized treatment or has participated in a program of rehabilitation for the condition, and

["(II) the condition is sufficiently under control to enable the veteran to participate in a vocational rehabilitation program under this chapter.

["(iii) Clause (i) of this subparagraph applies only if the veteran has filed an application under this paragraph not later than one year after whichever of the following last occurs:

["(I) The last date of the period of eligibility otherwise applicable under this section.

["(II) The termination of the last period of such treatment or such program of rehabilitation.

["(III) The date on which final regulations prescribed pursuant to clause (i) of this subparagraph are published in the Federal Register.

"(v) The period of time during which, pursuant to clause (i) of this subparagraph, the twelve-year period of eligibility does not run shall not exceed the lesser of—

["(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for a condition described in clause (ii) of this subparagraph plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by such condition from participating in a vocational rehabilitation program under this chapter, or

["(II) four years.

["(vi) When pursuant to clause (i) of this subparagraph a period of eligibility does not run for a period of time, such period of eligibility shall again begin to run on whichever of the following first occurs—

[“(I) the first day, following such condition becoming sufficiently under control to enable the veteran to participate in such program of vocational rehabilitation, on which it is reasonably feasible, in accordance with under such regulations, for the veteran to participate in such a program, or

[“(II) the day after the period of eligibility has not run, pursuant to such clause, for a period of time equaling four years.”.

[(c) EDUCATIONAL ASSISTANCE FOR POST-VIETNAM ERA VETERANS.—Section 1632(a) is amended—

[(1) in paragraph (2)(A)

[(A) by inserting “or because of a condition (and under the circumstances) described in paragraph (4)(A) of this section,” after “misconduct”; and

[(B) by inserting “(except as provided in paragraph (4)(B) of this subsection)” after “length of time”;

[“(2) in paragraph (3) by inserting “because of such disability,” after “subsection”; and

[“(3) by inserting at the end the following new paragraph:

[“(4)(A) A condition referred to in paragraph (2) of this subsection is an alcohol or drug dependence or abuse condition of an eligible veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

[(i) the veteran has received recognized treatment or participated in a program of rehabilitation for the condition, and

[(ii) the condition is sufficiently under control to enable the veteran to pursue the veteran's chosen program of eduction under this chapter.

[“(B)(i) Notwithstanding the provisions of paragraph (2) of this subsection, an eligible veteran may be granted an extension of the applicable delimiting period because of such a condition if the veteran files an application for such extension not later than one year after whichever of the following last occurs:

[“(I) The last date of the delimiting period otherwise applicable under this section.

[“(II) The termination of the last period of such treatment or such program of rehabilitation.

[“(III) The date of which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

[“(ii) An extension of the applicable deliminting period because of such a condition shall not exceed the lesser of—

[“(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by the condition from initiating or completing such program of education, or

[“(II) four years.

[“(iii) When such an extension is granted, the deliminting period with respect to the veteran will again begin running on whichever of the following first occurs—

[“(I) the first day, following the condition becoming sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with such regulations, for the veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

[(II) the day after the end of the fourth year of the extension.”.

[(d) EDUCATIONAL ASSISTANCE FOR VIETNAM-ERA VETERANS.—Section 1662(a) is amended—

[(1) in paragraph (1)—

[(A) in the first sentence, by inserting “or because of a condition (and under the circumstances) described in paragraph (4) of this subsection,” after “misconduct”; and

[(B) in the second sentence, by inserting “because of such disability” after “sentence”; and

[(2) by inserting at the end the following new paragraph:

[“(4)(A) A condition referred to in paragraph (1) of this subsection is an alcohol or drug dependence or abuse condition of a veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

[(i) the veteran has received recognized treatment or participated in a program of rehabilitation for the condition, and

[(ii) the condition is sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter.

[“(B)(i) Notwithstanding the provisions of paragraph (1) of this subsection, a veteran may be granted an extension of the applicable delimiting period because of such a condition if the veteran files an application for the extension not later than one year after whichever of the following last occurs:

[(I) The last date of the delimiting period otherwise applicable under this section.

[(II) The termination of the last period of such treatment or such program of rehabilitation.

[(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

[“(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

[(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitaion for the condition plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by the condition from initiating or completing such program of eduction, or

[(II) four years.

[“(iii) When such an extension is granted, the delimiting period with respect to the veterans will again begin running on whichever of the following first occurs—

[(I) the first day, following such condition becoming sufficiently under control to enable the veteran to pursue the veteran’s chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with such regulations, for the veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

[(II) the day after the end of the fourth year of the extension.”.

[(e) Educational Assistance for Survivors and Dependents.—Section 1712(b) is amended—

[(1) in paragraph (2)—

[(A) by inserting “or because of a condition (and under the circumstances) described in paragraph (4)(A) of this section,” after misconduct”;

[(B) by inserting “(except as provided in paragraph (4)(B)(ii) of this subsection)” after “length of time”; and

[(C) by inserting “because of such disability,” after “sentence”; and

(2) by inserting at the end the following new paragraph:

[“(4)(A) A condition referred to in paragraph (2) of this subsection is an alcohol or drug dependence or abuse condition of an eligible person in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

[(i) such person has received recognized treatment or participated in a program of rehabilitation for the condition, and

[(ii) the condition is sufficiently under control to enable such person to pursue such person’s chosen program of education under this chapter.

[“(B)(i) Notwithstanding the provisions of paragraph (2) of this subsection, an eligible person may be granted an extension of the applicable delimiting period because of such a condition if such person files an application for such extension not later than one year after whichever of the following last occurs:

[(I) The last date of the delimiting period otherwise applicable under this section.

[(II) The termination of the last period of such treatment or such program of rehabilitation.

[(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

[“(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

[“(I) the period during which the eligible person was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as such person demonstrates, to the satisfaction of the Administrator, that such person was prevented by the condition from initiating or completing such program of education, or

[(II) four years.

[“(iii) When such an extension is granted, the delimiting period with respect to such person will again begin running on whichever of the following first occurs—

[(I) the first day, following the condition becoming sufficiently under control to enable such person to pursue such person’s chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with such regulations, for such person to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

[(II) the day after the end of the fourth year of the extension.".

[SEC. 6 HOME-LOAN GUARANTY PROGRAM.

[(a)(1) INCREASE IN MAXIMUM GUARANTY.— Section 1810(c) is amended by striking out "$27,500" and inserting in lieu thereof "$36,000".

[(2) Section 1811(d)(2)(A) is amended by striking out "$27,500" both places it appears and inserting in lieu thereof "$36,000".

[(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1987.

SEC. 7. AUTOMOBILE ASSISTANCE ALLOWANCE.

[(a) INCREASE IN MAXIMUM ALLOWANCE.—Section 1902(a) is amended by striking out "$5,000" and inserting in lieu thereof $5,530".

[(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on October 1, 1987.

[SEC. 8. EXEMPTION OF CERTAIN PROGRAMS FROM SEQUESTRATION.

[(a) IN GENERAL.—Section 113 is amended—

[(1) in subsection (a)—

[(A) in clauses (4) and (5) by striking out "(but only with respect to fiscal year 1987)" each place it appears; and

[(B) by adding at the end the following new clause:

["(6) Benefits under chapter 37 of this title, relating to housing and small business loans for certain veterans and for the spouses and surviving spouses of certain veterans.";

[(2) by striking out subsection (e); and

[(3) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

[(b) EFFECTIVE DATES.—(1) The amendments made by subsection (a) shall apply with respect to a sequestration ordered, or a sequestration law enacted, for a fiscal year after fiscal year 1986.

[(2)(A) Notwithstanding subsection (b) of section 601 of the Veterans' Benefits Improvment and Health-Care Authorization Act of 1986 (PUblic Law 99-576), clause (2) of subsection (b) of section 113 of title 38, United States Code, as added by subsection (a) of section 601 of such Act, shall apply with respect to a sequestration order issue, or a sequestration law enacted, for a fiscal year after fiscal year 1985.

[(B) The Secretary of the Treasury shall take such action as is necessary to implement subparagraph (A) and shall, not later than 60 days after the date of the enactment of this Ac,t report to the appropriate Committees of the Congress on the actions taken by the Secretary pursuant to this paragraph.]

and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Omnibus Veterans' Benefits and Services Act of 1987".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—COMPENSATION AND OTHER BENEFITS

PART A—COMPENSATION AND RELATED COST-OF-LIVING ADJUSTMENTS

Sec. 101. Disability compensation and dependency and indemnity compensation.
Sec. 102. Specially adapted housing assistance.
Sec. 103. Automobile assistance allowance.
Sec. 104. Service-connected death benefits.
Sec. 105. Effective dates.

PART B—OTHER COMPENSATION-RELATED PROVISIONS

Sec. 111. Improved benefits for former prisoners of war.
Sec 112. Presumption of service connection for Lupus.
Sec. 113. Reinstated entitlement for certain survivors.
Sec. 114. Service-connected rehabilitation and education exemptions extensions.
Sec. 115. Study of scientific evidence regarding health effects of exposure to agent orange.
Sec. 116. Effective dates.

PART C—EDUCATION PROVISIONS

Sec. 121. Measurement of laboratory instruction.
Sec. 122. Tolling of delimiting periods.
Sec. 123. Authority to waive compliance surveys.
Sec. 124. Effective date of awards under the post-Vietnam era veterans' education assistance program.
Sec. 125. Repeal of expired program of accelerated-payment loans.

PART D—INSURANCE PROVISIONS

Sec. 131. Authority for annuity adjustments.
Sec. 132. Exemptions from State taxation.
Sec. 133. Mortgage protection life insurance.

PART E—PENSION PROVISION

Sec. 141. Income exclusion for casualty loss reimbursements.

TITLE II—VETERANS' RADIATION EXPOSURE

Sec. 201. Short title.
Sec. 202. Findings and conclusions; statement of purpose.
Sec. 203. Provision of disability and death benefits for certain veterans and their survivors.
Sec. 204. Radiation exposure estimates.
Sec. 205. Definitions.
Sec. 206. Preservation of existing rights.
Sec. 207. Extension of health-care eligibility.
Sec. 208. Requirements regarding veterans' environmental hazards advisory committee reports.
Sec. 209. Effective date.
Sec. 210. Termination of provisions.

TITLE III—HEALTH CARE

PART A—HEALTH-CARE PROGRAMS

Sec. 301. Services to overcome service-connected disabilities affecting procreation.
Sec. 302. Fee-basis authority expansion.
Sec. 303. Report on use of contract-care authorities.
Sec. 304. Contract care for service-connected disabled veterans overseas.
Sec. 305. Eligibility for domiciliary care.
Sec. 306. Pilot program of noninstitutional alternatives to institutional care.
Sec. 307. Community nursing home care in Alaska and Hawaii.
Sec. 308. Acquired immune deficiency syndrome matters.
Sec. 309. Rules and regulations relating to hospital, nursing home, domiciliary and medical care.
Sec. 310. Increase in per diem rates for care in State homes.
Sec. 311. Conditional approvals of applications for State home grants.
Sec. 312. Medicaid treatment of per diem payments to State veterans' homes.
Sec. 313. Therapeutic and rehabilitation revolving fund restoration.
Sec. 314. Veterans' Administration recreation sponsorship authority.
Sec. 315. Pilot program of mobile health-care clinics.
Sec. 316. Mental illness research.
Sec. 317. Report on certain activities relating to training in geriatrics of medical and other health-professional schools affiliated with the Veterans' Administration.

PART B—HEALTH-CARE ADMINISTRATION

Subpart 1—Health-Care Personnel

Sec. 321. Organization of the Department of medicine and Surgery.
Sec. 322. Making nurse additional-pay authorities available to assist in recruitment and retention of pharmacists and occupational therapists.
Sec. 323. Disciplinary matters as to certain appointees.
Sec. 324. Disciplinary actions and grievances.
Sec. 325. Premium pay for Saturday work.
Sec. 326. Educational assistance program.
Sec. 327. Recruitment and retention bonus pay.
Sec. 328. On-call pay.
Sec. 329. Nurse representation.
Sec. 330. Authority to waive licensure and internship requirements for certain health-care personnel.
Sec. 331. Rates of pay for certain psychologists.
Sec. 332. Study of pay and other personnel management practices.
Sec. 333. Drug testing of Veterans' Administration employees.

Subpart 2—Other Medical Administration Matters

Sec. 341. Repeal of authority to furnish tobacco to hospitalized veterans.
Sec. 342. Hospital cost collections.
Sec. 343. Fort claims.
Sec. 344. Annual Veterans' Administration medical facility construction authorization.
Sec. 345. Standardization of medical and pharmaceutical items.
Sec. 346. Requirements for the procurement of medical and pharmaceutical items.
Sec. 347. Multiyear medical procurements.

TITLE IV—MISCELLANEOUS

Sec. 401. Prohibition against excessing of certain Veterans' Administration properties.
Sec. 402. National cemetery grave markers.
Sec. 403. Lease of former medical center (Minot, North Dakota).
Sec. 404. Native Hawaiian representation on the advisory committee on Native-American veterans.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or a repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—COMPENSATION AND OTHER BENEFITS

PART A—COMPENSATION AND RELATED COST-OF-LIVING ADJUSTMENTS

SEC. 101. DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

(a) IN GENERAL.—(1) The Administrator of Veterans' Affairs shall, as provided in paragraph (2), increase, effective December 1, 1987, the rates of and limitations on Veterans' Administration disability compensation and dependency and indemnity compensation.

(2)(A) In the case of each of the rates and limitations in sections 314, 315(1), 362, 411, 413, and 414 of title 38, United States Code, that were increased by amendments made by title I of the Veterans' Compensation Rate Increase and Job Training Amendments of 1985 (Public Law 99-238), the Administrator shall further increase such rates and limitations, as in effect on November 30, 1987, by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1987, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(B) In the computation of increased rates and limitations pursuant to subparagraph (A), amounts of $0.50 or more shall be rounded to the next higher dollar amount and amounts of less than $0.50 shall be rounded to the next lower dollar amount.

(b) SPECIAL RULE.—The Administrator may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(c) PUBLICATION REQUIREMENT.—At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1988, the Administrator shall publish in the Federal Register the rates and limitations being increased under this section and the rates and limitations as so increased.

SEC. 102. SPECIALLY ADAPTED HOUSING ASSISTANCE.

Section 802 is amended—

(1) in subsection (a), by striking out "$35,500" and inserting in lieu thereof "$40,000"; and

(2) in subsection (b), by striking out "$6,000" and inserting in lieu thereof "$6,775".

SEC. 103. AUTOMOBILE ASSISTANCE ALLOWANCE.

Section 1902(a) is amended by striking out "$5,000" and inserting in lieu thereof "$5,530".

SEC. 104. SERVICE-CONNECTED DEATH BENEFITS.

Section 907 is amended by striking out "$1,100" and inserting in lieu thereof "$2,250".

SEC. 105. EFFECTIVE DATES.

(a) COMPENSATION RATE INCREASES.—The provisions of section 101 shall take effect on the date of the enactment of this Act.

(b) OTHER INCREASES.—The amendments made by sections 102, 103, and 104 shall take effect on October 1, 1987.

PART B—OTHER COMPENSATION-RELATED PROVISIONS

SEC. 111. IMPROVED BENEFITS FOR FORMER PRISONERS OF WAR.

(a) PRESUMPTION OF SERVICE CONNECTION FOR CERTAIN DISABILITIES.—Section 312(b) is amended—

(1) by striking out "or" at the end of clause (11); and

(2) by inserting after clause (12) the following new clauses:

"(13) peripheral neuropathy,

"(14) irritable bowel syndrome, or

"(15) peptic ulcer disease,".

(b) INTERNMENT PERIOD REQUIRED FOR VETERANS' ADMINISTRATION DENTAL CARE.—Section 612(b)(1)(G) is amended by striking out "six months" and inserting in lieu thereof "90 days".

SEC. 112. PRESUMPTION OF SERVICE CONNECTION FOR LUPUS.

Section 301(3) is amended by inserting below "Leukemia" the following: "Lupus erythematosus, systemic".

SEC. 113. REINSTATED ENTITLEMENT FOR CERTAIN SURVIVORS.

Section 156(a)(1) of Public Law 97-377 (96 Stat. 1830, 1920) is amended—

(1) in subparagraph (B), by inserting "or who meets the requirements for entitlement to the equivalent of such benefit provided under section 412(a) of title 38, United States Code" after "month"; and

(2) in subparagraph (A), by inserting ", or to the equivalent of such benefit based on meeting the requirements of section 412(a) of title 38, United States Code," after "(42 U.S.C. 402(g))".

SEC. 114. SERVICE-CONNECTED REHABILITATION AND EDUCATION EXEMPTIONS EXTENSIONS.

Section 113 is amended—

(1) in clauses (4) and (5) of subsection (a), by striking out "(but only with respect to fiscal year 1987)" each place it appears;

(2) by striking out subsection (e); and

(3) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

SEC. 115. STUDY OF SCIENTIFIC EVIDENCE REGARDING HEALTH EFFECTS OF EXPOSURE TO AGENT ORANGE.

(a)(1) Within 60 days after the date of the enactment of this section, the Administrator of Veterans' Affairs is directed to conclude negotiations for and enter into an agreement with the National Academy of Sciences under which the Academy will conduct a review of all scientific evidence, studies, and literature pertaining to the human health effects of exposure to agent orange and its component compounds and prepare the comprehensive report described in subsection (b). The Academy will conduct the review and prepare such report under an arrangement under which the actual expenses incurred by the Academy in conducting the review will be paid by the Administrator.

(2)(A) If the National Academy of Sciences is not willing to conduct the review and prepare the report described in paragraph (1) under the type of arrangement described in such paragraph, the Administrator shall enter into a similar arrangement with an appropriate nonprofit private scientific entity for such purposes.

(B) The Administrator may not obligate any funds under such an arrangement with a nonprofit private scientific entity as described in subparagraph (A) until specifically authorized to do so by a law enacted after the date on which this section is enacted.

(b) Not later than October 1, 1988, the Administrator shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives and make available to the public a comprehensive report prepared pursuant to an arrangement described in subsection (a)—

(1) describing the review conducted under such subsection; and

(2) containing a statement of the conclusions of the Academy or such other entity as conducts the review, based on such review, as to the weight of the evidence on the human health effects of exposure to agent orange and its component compounds.

(c) The authority provided in this section to enter into a contract shall be effective for a fiscal year to the extent or in such amount as is provided for in an appropriation Act.

SEC. 116. EFFECTIVE DATES.

(a) AMENDMENTS TO TITLE 38.—(1) The amendments made by sections 111 and 112 shall take effect on October 1, 1987.

(2) The amendments made by section 114 shall apply with respect to a sequestration ordered, or a sequestration law enacted, for a fiscal year after fiscal year 1986.

(b) OTHER AMENDMENTS AND PROVISIONS.—(1) The amendments made by section 113 shall take effect on October 1, 1987.

(2) The provisions of section 115 shall take effect on the date of the enactment of this Act.

PART C—EDUCATION PROVISIONS

SEC. 121. MEASUREMENT OF LABORATORY INSTRUCTION.

(a) Section 1788 is amended by—

(1) inserting in clause (B) of the first sentence of the matter following clause (7) of subsection (a) "(or two fifty-minute periods)" after "two hours"; and

(2) inserting in subsection (c) "(or two fifty-minute periods)" after "two hours".

(b) The amendments made by subsection (a) shall apply to any enrollment or reenrollment commencing on or after the date of enactment of this Act.

SEC. 122. TOLLING OF DELIMITING PERIODS.

(a) EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE ALL-VOLUNTEER FORCE.—Section 1431(d) is amended—

(1) in clause (1), by inserting "or because of a condition (and under the circumstances) described in paragraph (2) of this subsection" after "misconduct";

(2) in clause (2), by redesignating subclauses (A) and (B) as subclauses (i) and (ii);

(3) by redesignating clauses (1) and (2) as clauses (A) and (B);

(4) by inserting "(1)" before "In";

(2) by inserting at the end the following new paragraph:

"(2)(A) A condition referred to in paragraph (1)(A) of this subsection is an alcohol or drug dependence or abuse condition of an eligible individual in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

"(i) such individual has received recognized treatment or participated in a program of rehabilitation for the condition, and

"(ii) the condition is sufficiently under control to enable such individual to pursue such individual's chosen program of education under this chapter.

"(B)(i) Notwithstanding the provisions of paragraph (1)(B) of this subsection, an eligible individual's application for and extension of the 10-year period for use of entitlement under this chapter because of such a condition may be granted if such individual files an application for the extension not later than one year after whichever of the following last occurs:

"(I) The last date of the delimiting period otherwise applicable under this section.

"(II) The termination of the last period of such treatment or such program of rehabilitation.

"(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

"(ii) The period of time during which, based on the existence of such a condition, such 10-year period does not run shall not exceed the lesser of—

"(I) the period during which the eligible individual was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as such individual demonstrates, to the satisfaction of the Administrator, that such individual was prevented by the condition from initiating or completing such program of education, or

"(II) 4 years.

"(iii) When such an extension is granted, the 10-year period with respect to such individual will again begin running on whichever of the following first occurs—

"(I) the first day, following the condition becoming sufficiently under control to enable such individual to pursue such individual's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with the regulations prescribed pursuant to subparagraph (A) of this paragraph, for such individual to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

"(II) the day after the fourth year of the extension.".

(b) PROGRAMS OF REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES.—Section 1503(b) (1) is amended—

(1) by inserting "(A)" before "In";

(2) by inserting "(other than a condition described in subparagraph (B) (ii) of this paragraph)" after "medical condition" in subparagraph (A), as so redesignated; and

(3) by inserting at the end the following new subparagraph:

"(B)(i) Subject to clauses (iii) and (iv) of this subparagraph, in any case in which the Administrator determines, under regulations which the Administrator shall prescribe, that a veteran has been prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because a condition described in clause (ii) of this subparagraph made it infeasible for the veteran to participate in such a program, the 12-year period of eligibility shall not run during the period of time that the veteran was so prevented from participating in such a program.

"(ii) A condition referred to in clause (i) of this subparagraph is an alcohol or drug dependence or abuse condition of a veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

"(I) the veteran has received recognized treatment or has participated in a program of rehabilitation for the condition, and

"(II) the condition is sufficiently under control to enable the veteran to participate in a vocational rehabilitation program under this chapter.

"(iii) Clause (i) of this subparagraph applies only if the veteran has filed an application under this paragraph not later than one year after whichever of the following last occurs:

"(I) The last date of the period of eligibility otherwise applicable under this section.

"(II) The termination of the last period of such treatment or such program of rehabilitation.

"(III) The date on which final regulations prescribed pursuant to clause (i) of this subparagraph are published in the Federal Register.

"(iv) The period of time during which, pursuant to clause (i) of this subparagraph, the 12-year period of eligibility does not run shall not exceed the lesser of—

"(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for a condition described in clause (ii) of this subparagraph plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by such condition from participating in a vocational rehabilitation program under this chapter, or

"(II) 4 years.

"(v) When pursuant to clause (i) of this subparagraph a period of eligibility does not run for a period of time, such period of eligibility shall again begin to run on whichever of the following first occurs—

"(I) the first day, following such condition becoming sufficiently under control to enable the veteran to participate in such program of vocational rehabilitation, on which it is reasonably feasible, in accordance with under the regulations prescribed pursuant to clause (i) of this subparagraph, for the veteran to participate in such a program, or

"(II) the period of time during which the 12-year period of eligibility has pursuant to such clause, been stopped from running equals 4 years.".

(c) EDUCATIONAL ASSISTANCE FOR POST-VIETNAM ERA VETERANS.—Section 1632(a) is amended—

(1) in paragraph (2)(A)—

(A) by inserting "or because of a condition (and under the circumstances) described in paragraph (4)(A) of this section," after "misconduct,"; and

(B) by inserting "(except as provided in paragraph (4)(B) of this subsection)" after "length of time";

(2) in paragraph (3) by inserting "because of such disability" after "subsection"; and

(3) by inserting at the end the following new paragraph:

"(4)(A) A condition referred to in paragraph (2) of this subsection is an alcohol or drug dependence or abuse condition of an eligible veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

"(i) the veteran has received recognized treatment or participated in a program of rehabilitation for the condition, and

"(ii) the condition is sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter.

"(B)(i) Notwithstanding the provisions of paragraph (2) of this subsection, an eligible veteran may be granted an extension of the applicable delimiting period because of such a condition if the veteran files an application for such extension not later than one year after whichever of the following last occurs:

"(I) The last date of the delimiting period otherwise applicable under this section.

"(II) The termination of the last period of such treatment or such program of rehabilitation.

"(III) The date of which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

"(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

"(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by the condition from initiating or completing such program of education, or

"(II) 4 years.

"(iii) When such an extension is granted, the delimiting period with respect to the veteran will again begin running on whichever of the following first occurs—

"(I) the first day, following the condition becoming sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with such regulations, for the veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

"(II) the day after the end of the fourth year of the extension.".

(d) EDUCATION ASSISTANCE FOR VIETNAM-ERA VETERANS.—Section 1662(a) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by inserting "or because of a condition (and under the circumstances) described in paragraph (4) of this subsection," after "misconduct"; and

(B) in the second sentence, by inserting "because of such disability" after "sentence"; and

(2) by inserting at the end the following new paragraph:

"(4)(A) A condition referred to in paragraph (1) of this subsection is an alcohol or drug dependence or abuse condition of a veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

"(i) the veteran has received recognized treatment or participated in a program of rehabilitation for the condition, and

"(ii) the condition is sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter.

"(B)(i) Notwithstanding the provisions of paragraph (1) of this subsection, a veteran may be granted an extension of the applicable delimiting period because of such a condition if the veteran files an application for the extension not later than one year after whichever of the following last occurs:

"(I) The last date of the delimiting period otherwise applicable under this section.

"(II) The termination of the last period of such treatment or such program of rehabilitation.

"(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

"(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

"(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by the condition from initiating or completing such program of education, or

"(II) 4 years.

"(iii) When such an extension is granted, the delimiting period with respect to the veteran will again begin running on whichever of the following first occurs—

"(I) the first day, following such condition becoming sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with the regulations prescribed pursuant to subparagraph (A) of this paragraph, for the veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

"(II) the day after the end of the fourth year of the extension.".

"(e) EDUCATIONAL ASSISTANCE FOR SURVIVORS AND DEPENDENTS.—Section 1712(b) is amended—

(1) in paragraph (2)—

(A) by inserting "or because of a condition (and under the circumstances) described in paragraph (4)(A) of this section," after "misconduct";

(B) by inserting "(except as provided in paragraph (4)(B)(ii) of this subsection)" after "length of time"; and

(C) by inserting "because of such disability," after "sentence"; and

(2) by inserting at the end the following new paragraph:

"(4)(A) A condition referred to in paragraph (2) of this subsection is an alcohol or drug dependence or abuse condition of an eligible person in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

"(i) such person has received recognized treatment or participated in a program of rehabilitation for the condition, and

"(ii) the condition is sufficiently under control to enable such person to pursue such person's chosen program of education under this chapter.

"(B)(i) Notwithstanding the provisions of paragraph (2) of this subsection, an eligible person may be granted an extension of the applicable delimiting period because of such a condition if such person files an application for such extension not later than one year after whichever of the following last occurs:

"(I) The last date of the delimiting period otherwise applicable under this section.

"(II) The termination of the last period of such treatment or such program of rehabilitation.

"(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

"(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

"(I) the period during which the eligible person was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as such person demonstrates, to the satisfaction of the Administrator, that such person was prevented by the condition from initiating or completing such program of education, or

"(II) 4 years.

"(iii) When such an extension is granted, the delimiting period with respect to such person will again begin running on whichever of the following first occurs—

"(I) the first day, following the condition becoming sufficiently under control to enable such person to pursue such person's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with the regulations prescribed pursuant to subparagraph (A) of this paragraph, for such person to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

"(II) the day after the end of the fourth year of the extension.".

SEC. 123. AUTHORITY TO WAIVE COMPLIANCE SURVEYS.

The text of section 1793 is amended to read as follows:

"(a) Except as provided in subsection (b) of this section, the Administrator shall conduct an annual compliance survey of each institution offering one or more courses approved for the enrollment of eligible veterans or persons where at least 300 veterans or persons are enrolled under provisions of this title or when the course does not lead to a standard college degree. Such compliance survey shall be designed to ensure that the institution and approved courses are in compliance with all applicable provisions of chapters 31, 34, 35, and 36 of this title. The Administrator shall assign at least one education compliance specialist to work on compliance surveys in any year for each 40 compliance surveys required to be made under this section.

"(b) The Administrator may waive the requirement in subsection (a) of this section for an annual compliance survey with respect to an institution if such an institution has a demonstrated record of compliance with all the applicable provisions of chapters 31, 34, 35, and 36 of this title warranting a determination that the waiver would be appropriate and in the best interest of the United States Government.".

SEC. 124. EFFECTIVE DATE OF AWARDS UNDER THE POST-VIETNAM ERA VETERANS' EDUCATION ASSISTANCE PROGRAM.

Section 3013 is amended by inserting "32," after "31,".

SEC. 125. REPEAL OF EXPIRED PROGRAM OF ACCELERATED-PAYMENT LOANS.

Sections 1682A, 1686, 1737, and 1738 are repealed.

PART D—INSURANCE PROVISIONS

SEC. 131. AUTHORITY FOR ANNUITY ADJUSTMENTS.

(a)(1) Subchapter 1 of chapter 19 is amended by adding at the end the following new section:

"§ 727. Authority for higher monthly installments payable to certain annuitants

"(a) Notwithstanding sections 702, 723, and 725 of this title, the Administrator may from time to time adjust the dollar amount of the monthly installments payable to a beneficiary of National Service Life Insurance, Veterans Special Life Insurance, or Veterans Reopened Insurance who is receiving such proceeds under a life annuity settlement option. The Adminstrator may make such adjustments only in accordance with a determination that the adjustments are administratively and actuarially sound for the program of insurance concerned.

"(b) The Administrator shall determine the amount in the trust funds in the Treasury held for payment of proceeds to National Service Life Insurance, Veterans Special Life Insurance, and Veterans Reopened Insurance beneficiaries attributable to interest and mortality gains on the reserves held for annuity accounts. Such amount shall be available for distribution to the life annuitants referred to in subsection (a) as a fixed percentage of, and in addition to, the monthly installment amount to which the annuitants are entitled under this subchapter. For the purposes of this section, gains on the reserves are defined as funds attributable solely to annuity accounts that are in excess of actuarial liabilities.

"(c) The monthly annuity amounts authorized in sections 702, 723, and 725 of this title shall remain the minimum rates payable.".

(2) The table of sections at the beginning of chapter 19 is amended by inserting after the item relating to section 726 the following new item:

"727. Authority for higher monthly installments payable to certain annuitants.".

(b)(1) Subchapter II of chapter 19 is further amended by adding at the end the following new section:

"§ 762. Authority for higher monthly installments payable to certain annuitants

"(a) Notwithstanding section 744 of this title, the Administrator may from time to time adjust the dollar amount of the monthly installments payable to a beneficiary of United States Government Life Insurance who is receiving such proceeds under a life annuity settlement option. The Administrator may make such adjustments only in accordance with a determination that the adjustments are administratively and actuarially sound.

"(b) The Administrator shall determine the amount in the trust fund in the Treasury held for payment of proceeds to United States Government Life Insurance beneficiaries attributable to interest and mortality gains on the reserves held for annuity accounts. Such amount shall be available for distribution to the life annuitants referred to in subsection (a) as a fixed percentage of, and in addition to, the monthly installment amount to which the annuitants are entitled under this subchapter. For the purposes of this section, gains on the reserves are defined as funds attributable solely to annuity accounts that are in excess of actuarial liabilities.

"(c) In no event shall calculations of the monthly installment amount be less than that authorized in section 744 of this title.".

(2) The table of sections at the beginning of chapter 19 is amended by inserting after the item relating to section 761 the following new item:

"762. Authority for higher monthly installments payable to certain annuitants.".

SEC. 132. EXEMPTIONS FROM STATE TAXATION.

Section 769 is amended by adding at the end the following new subsection:

"(g)(1) No tax, fee, or other monetary payment may be imposed or collected by any State, or by any political subdivision or other governmental authority thereof, on or with respect to any premium paid under an insurance policy purchased under this subchapter.

"(2) Paragraph (1) of this subsection shall not be construed to exempt any company issuing a policy of insurance under this subchapter from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by that company from business conducted under this subchapter, if that tax, fee, or payment is applicable to a broad range of business activity.".

SEC. 133. MORTGAGE PROTECTION LIFE INSURANCE.

(a) IN GENERAL.—Section 806 is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) The Administrator is authorized—

"(1) to establish a program that provides the insurance benefits specified in this section and to obligate the United States to pay the insurance benefits under such program; or

"(2) to purchase from one or more life insurance companies, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), a policy or policies of mortgage protection life insurance on a group basis to provide such benefits.";

(2) in subsection (b), by striking out "Any policy of insurance purchased by the Administrator under this section" and inserting in lieu thereof "Any program established under subsection (a)(1) of this section and any policy of insurance purchased by the Administrator under subsection (a)(2) of this section";

(3) in subsection (d)—

(A) by inserting ", in the case of insurance purchased under subsection (a)(2) of this section," in the second sentence after "Veterans' Administration and"; and

(B) by striking out "directly to the insurer or insurers" in the third sentence and inserting in lieu thereof "directly to the United States (in the case of an insurance program established under subsection (a)(1) of this section) or directly to the insurer or insurers (in the case of insurance purchased under subsection (a)(2) of this section)";

(4) in subsection (e)—

(A) by designating the first, second, and third sentences as paragraphs (1), (3), and (4), respectively;

(B) by inserting after paragraph (1), as designated in subclause (A), the following new paragraph:

"(2) Premiums collected for insurance under any program established under subsection (a)(1) of this section shall be credited to the 'Veterans Insurance and Indemnities' appropriation and all disbursements of insurance proceeds under such program shall be made from that appropriation."; and

(C) by inserting "subsection (a)(2) of" in paragraph (3), as designated in subclause (A), after "purchased under";

(5) in subsection (h)—

(A) by striking out "contracted for" each place it appears and inserting in lieu thereof "provided"; and

(B) by striking out "policy" in the third sentence and inserting in lieu thereof "Administrator (in the case of a program established under subsection (a)(1) of this section) or by a policy purchased under subsection (a)(2) of this section";

(6) in subsection (i)—

(A) by striking out "Insurance contracted for" and inserting in lieu thereof "Insurance provided in the case of any veteran"; and

(B) by striking out "the entire contract or agreement" in clause (5) and inserting in lieu thereof "the insurance program or, in the case of insurance contracted for under subsection (a)(2) of this section, the contract.";

(7) in subsection (j), by striking out "of the mortgage protection life insurance" and inserting in lieu thereof "life insurance under this section"; and

(8) by adding at the end the following:

"(k)(1) There may not be in effect at the same time any program under subsection (a)(1) of this section and any insurance contract purchased under subsection (a)(2) of this section.

"(2) The Administrator may terminate any program referred to in paragraph (1) of this subsection or any contract referred to in such paragraph in order to comply with the requirements of such paragraph.

"(l) The Administrator shall ensure that a veteran who is insured under a program or life insurance policy terminated under subsection (k) of this section shall continue to be insured under any successor program established under subsection (a)(1) of this section or any successor policy purchased under subsection (a)(2) of this section.

"(m)(1) In the case of any policy of insurance purchased in accordance with this section that is terminated under subsection (k) of this section—

"(A) the amount equal to the total amount of the premiums collected or received by an insurer under such policy on or after the date of the termination, and

"(B) any positive balance in the contingency reserve maintained by the insurer under such policy that remains after all charges have been made to such reserve,

shall be paid to the Administrator and shall be deposited in the Treasury of the United States.

"(2) Any insurer that is required to pay an amount out of funds in a contingency reserve under paragraph (1) of this subsection may, upon the election of such insurer, pay such amount in equal monthly installments over a period of not more than 2 years.

"(n) No right of a veteran or mortgage loan holder under an insurance program or policy terminated under subsection (k) of this section shall be impaired by reason of such termination if such right matured before the date of the termination.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect October 1, 1987.

Part E—Pension Provision

SEC. 141. INCOME EXCLUSION FOR CASUALTY LOSS REIMBURSEMENTS.

(a) In general.—Clause (I) of section 415 (f)(1) is amended to read as follows:

"(I) reimbursement of any kind for any casualty loss, as defined in regulations which the Administrator shall prescribe, but in no event shall the amount to be excluded exceed the greater of the fair market value or reasonable replacement value of the property involved immediately preceding the loss;".

(b) Effective Date.—The amendment made by subsection (2) shall take effect on October 1, 1987.

TITLE II—VETERANS' RADIATION EXPOSURE

SEC. 201. SHORT TITLE.

This title may be cited as the "Veterans' Radiation Exposure Disability and Death Benefits Act of 1987".

SEC. 202. FINDINGS AND CONCLUSIONS; STATEMENT OF PURPOSE.

(a)(1) The Congress makes the following findings:

(A) In November 1985, the General Accounting Office (hereinafter in this section referred to as the "GAO") released the results of a two-year study requested by the Congress of radiation exposure and radiation safety measures during "Operation Crossroads", the 1946 nuclear weapons test series in the Pacific in which over forty-two thousand members of the Armed Forces participated, the largest number of participants of any such test series. The GAO concluded that the estimates of radiation exposure prepared by the Defense Nuclear Agency (hereinafter in this section referred to as the "DNA") for that operation may have significantly understated the actual ionizing radiation exposure received by participants in Operation Crossroads. Specifically, the GAO found:

(i) The DNA radiation exposure estimates were derived primarily from readings taken from film badges designed to detect radiation, which were worn by participants in Operation Crossroads. However, only 15 percent of the participants actually were issued film badges, and the badges were not worn throughout the entire course of Operation Crossroads.

(ii) The DNA radiation exposure estimates failed to take into account problems related to the film badges which could have resulted in readings that were inaccurate by as much as 100 percent as a result of defects in the film or in its processing.

(iii) The DNA radiation exposure estimates failed to take into account the extent to which Operation Crossroads participants received additional radiation exposure as a result of a lack or violation of comprehensive decontamination procedures.

(iv) The DNA radiation exposure estimates did not adequately measure internal radiation exposure which could have resulted from ingestion or inhalation, thereby likely further underestimating total radiation exposure.

(B) In February 1986, the GAO began a Congressionally-requested study of three nuclear weapons test series (Operation Tumbler-Snapper, a 1952 Nevada test series, Operation Redwing, a 1956 Pacific test series, and Operation Dominic I, a 1961 Pacific test series) in order to determine the radiation exposure of personnel manning or decontaminating aircraft that flew through nuclear clouds at those tests. The GAO's preliminary findings from this study of approximately 900 Air Force personnel from these operations involved in cloud sampling parallel its findings in the Crossroads study that DNA radiation exposure estimates significantly understate actual radiation exposure and that radiation safety measures were inconsistently applied, and also found that, contrary to DNA assertions, a substantial number of the participants in these operations received significant amounts of radiation exposure.

(C) On the basis of the GAO reports, the Congress has concluded that the DNA's radiation exposure estimates provide an incomplete measure of the radiation exposure received by participants in Operation Crossroads, Tumbler-Snapper, Redwing, and Dominic I and that serious questions have been raised about the accuracy of such estimates in general.

(D) The DNA radiation exposure estimates have been relied on by the Veterans' Administration (hereinafter in this section referred to as the "VA") in evaluating, and generally denying, claims made by veterans or veterans' survivors for compensation in connection with radiation exposure received during Operation Crossroads.

(E) Including more than forty two thousand veterans who participated in Operation Crossroads, approximately 200,000 veterans participated in 235 detonations of nuclear devices in connection with the nuclear weapons testing program. As outlined in paragraphs (8) and (9) of section 2 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542), enacted on October 24, 1984, Congress found in that Act:

(i) The film badges which were originally issued to members of the Armed Forces in connection with the nuclear weapons testing program have previously constituted a primary source of dose information for veterans and survivors of veterans filing claims under chapter 11 or 13 of title 38, United States Code, for VA disability compensation or dependency and indemnity compensation in connection with exposure to radiation.

(ii) These film badges often provide an incomplete measure of radiation exposure, since they were not capable of recording inhaled, ingested, or neutron doses, were not issued to most of the participants in the tests, often provided questionable readings because they were shielded during the detonation, and were worn for only limited periods during and after each nuclear detonation.

(F) Studying the radiation exposure and long-term health effects of the tests other than Operation Crossroads and of the cloud-sampling operations other than Operations Tumbler-Snapper, Redwing, and Dominic I, would entail many years, and the delay in providing relief to veterans suffering radiation-related diseases would be unacceptable.

(G) Because of the relatively small size of the population of ionizing radiation-exposed veterans, the high incidence of cancer in the general population, and the great difficulty in locating individuals twenty-five to forty years after their radiation exposure, no scientifically feasible morbidity study has yet been designed of the veterans who participated in the nuclear weapons testing program or the American occupation of Hiroshima or Nagasaki, Japan. A mortality study of a group of veterans from one series of detonations—Operation Crossroads—is only now in its early stages. An earlier mortality study of the veterans from five test series was severely criticized because of the failure to utilize a scientifically appropriate control group.

(H) Scientific research over many years has proven conclusively the dangers to human health from exposure to ionizing radiation.

(2) On the basis of the foregoing findings, the Congress concludes that a significant portion, if not all, of the veterans present at the nuclear detonations were exposed to some quantity of ionizing radiation from inhalation, ingestion, or external exposure and that no fully acceptable or reliable method has been developed to estimate those levels of exposure.

(3) The Congress makes the following further findings:

(A) It has become clear that the present process for adjudicating radiation-exposure claims that has been based on such radiation exposure estimating methods as are described in paragraph (1) of this section has resulted in a lack of fairness and consistency in the adjudication of those claims. As the Congress found in 1984 in section 2(12) of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542), such claims—particularly those involving health effects with long latency periods—present adjudicatory issues which differ significantly from the issues presented in claims based upon the more usual types of injuries incurred in military service. Although since 1978 substantially more than six thousand claims for compensation or dependency and indemnity compensation have been filed by veterans and their survivors with the VA for disabilities claimed to have resulted from radiation exposure received during participation in the nuclear weapons testing program or in the occupation of Hiroshima or Nagasaki, Japan, the VA has awarded benefits in only twenty-eight of those cases.

(B) There is some evidence that officials of the United States Government were aware as early as 1945 of the risks of long-term, adverse health effects from exposure to ionizing radiation and much evidence of such awareness on the part of such officials by the early 1950's. Nevertheless, military personnel repeatedly were exposed to ionizing radiation in connection with the nuclear weapons testing program from 1945 to 1962. These military personnel were not informed of the risks associated with their participation in the program; nor was their health status systematically monitored thereafter.

(C) Accordingly, exposing these military personnel to such risks in experiments relating to the development and potential use of nuclear weapons, and making no systematic effort to monitor their health thereafter, places an even greater than usual responsibility on the Government to ensure that these veterans receive appropriate compensation as well as necessary health care through the VA for any disabilities resulting from such exposure.

(D) The precise correlation between specific doses of ionizing radiation and the probability of cancer induction in a particular body organ or tissue in a given individual is not known at this time. What is known, however, is the following:

(i) Certain body organs and tissues have been shown to have a high susceptibility to induction of cancers by ionizing radiation, and not to be associated with any other risk factors. The resultant diseases are cancer of the thyroid and leukemia (excluding chronic lymphocytic leukemia).

(ii) Other body organs and tissues have been shown to be moderately susceptible to induction of cancer by radiation and to not be as associated with any other risk factors. The resultant diseases are cancer of the small intestine, cancer of the stomach, cancer of the liver (except where cirrhosis or hepatitis B is indicated), cancer of the bile ducts, cancer of the gallbladder, cancer of the pancreas, lymphomas (excluding Hodgkin's disease), and multiple myeloma. The link between such diseases and radiation exposure, and therefore the likelihood that the disease was incurred during service, is less well-established than it is between the diseases referred to in division (i) of this subparagraph.

(iii) Certain other body organs and tissues have been shown to be moderately susceptible or somewhat susceptible to induction of cancer by radiation, but either generally much less susceptible than those described in divisions (i) and (ii) of this subparagraph or equally or even more associated with other risk factors than they are susceptible to induction by radiation. The resultant diseases are cancer of the lung, cancer of the colon, cancer of the esophagus, cancer of the rectum, cancer of the pharynx, cancer of the liver where cirrhosis or hepatitis B is indicated, cancer of the kidney, cancer of the urinary tract, cancer of the bladder, cancer of the brain and nervous system, cancer of the salivary glands, cancer of the bones and joints, and cutaneous melanoma. The link between such diseases and radiation exposure, and therefore the likelihood that the disease was incurred during service, is much less well-established than it is between the diseases referred to in division (1) of this subparagraph.

(E) As stated in section 2(13) of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542), it has always been the policy of the VA, and it is the policy of the United States, that when, with respect to individual claims for service connection of diseases and disabilities, after consideration of all evidence and material of record, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of a claim, the benefit of the doubt in resolving each such issue shall be given to the claimant.

(b) It is therefore the purpose of this Act to establish a process within the VA for carrying out the findings and conclusions of the Congress set forth in subsection (a) in order to—

(1) provide a monthly disability or death benefit equal to that provided in chapter 11 or 13 of title 38, United States Code, based on the exposure of a veteran to ionizing radiation during participation in the nuclear weapons testing program or in the American occupation of Hiroshima or Nagasaki, Japan, when the veteran develops a disease, described in subparagraph (D)(i) of this paragraph, which has been shown to be strongly susceptible to induction by radiation and which has not been shown to be strongly associated with any other risk factors;

(2) provide such a monthly disability or death benefit based on the exposure of such a veteran to more than one rem of ionizing radiation during participation in the nuclear weapons testing program or in the American occupation of Hiroshima or Nagasaki, Japan, when the veteran develops a disease, described in subparagraph (D)(ii) of this paragraph, which has been shown to be moderately susceptible to induction by radiation and which has not been shown to be associated with other significant risk factors; and

(3) provide special consideration of claims for compensation or dependency and indemnity compensation under chapter 11 or 13 of title 38, United States Code, based on the exposure of a veteran to ionizing radiation during participation in the nuclear weapons testing program or in the American occupation of Hiroshima or Nagasaki, Japan, when the veteran (A) has an estimated service-related radiation exposure of more than 1 rem as computed pursuant to subsec-

tion (c) of section 354 of title 38, United States Code (as added by section 204 of this Act), develops a disease, described in subparagraph (D)(iii) of this paragraph, which has been shown to be moderately susceptible or somewhat susceptible to induction by radiation, but generally much less so than those diseases referred to in paragraphs (1) and (2) of this subsection, or is equally or more strongly associated with other risk factors than with radiation.

SEC. 203. PROVISION OF DISABILITY AND DEATH BENEFITS FOR CERTAIN VETERANS AND THEIR SURVIVORS.

Title 38 is amended by inserting after chapter 13 the following new chapter:

"CHAPTER 14—DISABILITY AND DEATH BENEFITS FOR CERTAIN VETERANS EXPOSED TO IONIZING RADIATION AND THEIR SURVIVORS

"Sec.
"451. Definitions.
"452. Disability and death benefits for radiation-exposed veterans and their survivors.
"453. Rates of disability and death benefits.
"454. Special consideration in connection with other diseases.
"455. Contrary affirmative evidence.
"456. Other benefits.

"§ 451. Definitions

"For the purpose of this chapter, the term 'radiation-exposed veteran' means a veteran (including a person who died in the active military, naval, or air service) who, in connection with such veteran's participation in the United States Government's test of a nuclear device or in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, was exposed to ionizing radiation from the detonation of a nuclear device during such veteran's service.

"§ 452. Disability and death benefits for radiation-exposed veterans and their survivors

"(a) In the case of a radiation-exposed veteran who suffers or has died from a disease specified in subsection (c)(1) of this section, the Administrator shall pay a monthly disability benefit to such veteran or a monthly death benefit to the survivors of such veteran in accordance with section 453 of this title.

"(b) In the case of a radiation-exposed veteran who suffers or has died from a disease specified in subsection (c)(2) of this section and whose estimated service-related radiation exposure, as computed pursuant to section 354(c) of this title, exceeds 1 rem, the Administrator shall pay a monthly disability benefit to such veteran or a monthly death benefit to the survivors of such veteran in accordance with section 453 of this title.

"(c)(1) The diseases referred to in subsection (a) of this section are the following:

"(A) cancer of the thyroid, when manifested 5 or more years after the first date on which the radiation-exposed veteran participated in the ionizing radiation-exposing activity;

"(B) leukemia (except for chronic lymphocytic leukemia), when manifested within 30 years after the last date on which the radiation-exposed veteran participated in the ionizing radiation-exposing activity.

"(2) The diseases referred to in subsection (b) of this section are the following, when manifested 5 or more years after the first date on which the radiation-exposed veteran participated in the ionizing radiation-exposed activity:

"(A) cancer of the small intestine;
"(B) cancer of the stomach;
"(C) cancer of the liver, except where cirrhosis or hepatitis B is indicated;
"(D) cancer of the bile ducts;
"(E) cancer of the gallbladder;
"(F) cancer of the pancreas;
"(G) lymphomas (excluding Hodgkin's disease); and
"(H) multiple myeloma.

"(d) A benefit may not be paid under this section with respect to a disease or the death of a radiation-exposed veteran for any month for which compensation is payable to that veteran for that disease under chapter 11 of title 38, United States Code, or for which dependency and indemnity compensation is payable for that death under chapter 13 of such title.

"§ 453. Rates of disability and death benefits

"A disability benefit payable to a veteran for a disease specified in section 452(c) of this title shall be paid at the rate at which compensation would be payable under chapter 11 of this title for the disability resulting from such disease if the disability were determined to be service connected, and a death benefit payable to the survivors of a radiation-exposed veteran pursuant to section 452 of this title shall be paid based on the eligibility requirements (other than any requirement relating to the service-connection or compensability of a disability) and at the rates that apply to benefits under chapter 13 of this title.

"§ 454. Special consideration in connection with other diseases

"(a) When a claim is filed by a radiation-exposed veteran or a survivor of a radiation-exposed veteran for benefits under chapter 11 or chapter 13 of this title, in connection with any disease specified in subsection (b) of this section and such veteran's estimated service related radiation exposure, as computed pursuant to subsection (c) of section 354 of title 38, United States Code (as added by section 204 of this Act), exceeds 1 rem, the Administrator shall give special consideration to the adjudication of such claim, including giving conclusive weight to the findings of the Congress set forth in section 2 of the Veterans' Radiation Exposure Disability and Death Benefits Act of 1987 relating to the relationship between the disease for which benefits are claimed and ionizing radiation exposure, in the process of evaluating the claim using the radiation-exposed veteran's estimated service-related radiation exposure as computed pursuant to section 354(c) of this title.

"(b) The diseases referred to in subsection (a) of this section are the following, when manifested 5 or more years after the first date on which the radiation-exposed veteran participated in the ionizing radition-exposing activity:

"(1) Cancer of the lung;
"(2) cancer of the colon;
"(3) cancer of the esophagus;
"(4) cancer of the rectum;
"(5) cancer of the pharynx;
"(6) cancer of the liver where cirrhosis or hepatitis B is indicated;
"(7) cancer of the kidney;
"(8) cancer of the urinary tract;
"(9) cancer of the bladder;
"(10) cancer of the brain and nervous system;
"(11) cancer of the salivary glands;
"(12) cancer of the bones and joints; and
"(13) cutaneous melanoma.

"§ 455. Contrary affirmative evidence

"The provisions of this chapter shall not apply with respect to a disease occurring in a radiation-exposed veteran—

"(1) where there is affirmative evidence that the disease was not incurred as the result of the veteran's participation in the United States Government's test of a nuclear device or in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946; or

"(2) where there is affirmative evidence to establish that an intercurrent injury or disease which is a recognized cause of the disease was suffered by the veteran between the date of the veteran's most recent participation in such a test or in such occupation and the onset of such described disease.

"§ 456. Other benefits

"(a) Any disease establishing eligibility for a disability or death benefit under this chapter shall be treated for purposes of all other laws of the United States (other than chapters 11 and 13 of this title) as if such disease were service connected.

"(b) Receipt of any disability or death benefit under this chapter shall be treated for purposes of all other laws of the United States as if such benefit were compensation under chapter 11 of this title or dependency and indemnity compensation under chapter 13 of this title, respectively.".

SEC. 204. RADIATION EXPOSURE ESTIMATES.

(a) Section 301 is amended by adding at the end the following new paragraphs:

"(5) The term 'radiation-exposed veteran' has the same meaning given such term in section 451 of this title.

"(6) The term 'DNA estimate' means the radiation exposure estimate calculated by the Defense Nuclear Agency of the Department of Defense pursuant to the guidelines, as in effect on July 31, 1987, prescribed by the Secretary of Defense pursuant to section 7(a)(1) of the Veterans' Dioxin and Radiation Compensation Standards Act (Public Law 98-542).".

(b) Section 354 is amended by adding at the end the following new subsection:

"(c) For the purpose of adjudicating a claim for benefits under chapters 11, 13, or 14 of this title, submitted by a radiation-exposed veteran or by the survivor of a radiation-exposed veteran, the veteran's estimated service-related radiation exposure shall be the total of the highest radiation exposure estimate determined by the Director of the Defense Nuclear Agency (or any other appropriate office of the Department of Defense) for that individual, as established by film badge reading, reconstruction, or a combination of film badge reading and reconstruction, plus—

"(1) in the case of a radiation-exposed veteran who was exposed to ionizing radiation through such veteran's participation in an operation in the United States Government's nuclear weapons testing program—

"(A) an additional 5 rems, if the DNA estimates indicate that 25 percent or more of the members of the radiation-exposed veteran's service branch participating in the operation, or 25 percent or more of the total number of participants in the operation, were exposed to more than 3 rems of ionizing radiation;

"(B) an additional 3 rems, if the DNA estimates indicate that 25 percent or more of the members of the radiation-exposed veteran's service branch participating in the operation, or 25 percent or more of the total number of participants in the operation, were exposed to more than 1 rem of ionizing radiation; or

"(C) an additional 1 rem, if the DNA estimates indicate that 20 percent or more of the members of the radiation-exposed veteran's service branch participating in the operation, or 20 percent or more of the total number of participants in the operation, were exposed to more than 0.5 rem of ionizing radiation;

"(2) in the case of a radiation-exposed veteran who was exposed to ionizing radiation through such veteran's participation in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, an additional 1 rem; or

"(3)(A) in the case of a radiation-exposed veteran who was exposed to ionizing radiation through such veteran's participation in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, and participated in one or more nuclear weapons tests, the total of the highest numbers of rems determined for such veteran under subclauses (A), (B), and (C) of clause (1) of this subsection plus any number of rems determined under clause (2) of this subsection; or

"(B) in the case of a radiation-exposed veteran who was exposed to ionizing radiation through such veteran's participation in more than one nuclear weapons test, the total of the highest numbers of rems determined for such veteran under subclauses (A), (B), and (C) of clause (1) of this subsection.".

SEC. 205. DEFINITIONS.

For the purpose of this Act, the term "radiation-exposed veteran" has the same meaning given such term in section 451 of title 38, United States Code (as added by section 203 of this Act).

SEC. 206. PRESERVATION OF EXISTING RIGHTS.

Nothing in this Act shall in any way operate or be construed to prevent the granting of service connection under chapter 11 or 13 of title 38, United States Code, in the case of any disease or disability from which a radiation-exposed veteran suffers or has died, including those diseases or disabilities described in this Act, otherwise determined through the exercise of sound judgment to have been incurred in or aggravated by active military, naval, or air service, including such veteran's participation in the United States Government's nuclear weapons testing program or in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946.

SEC. 207. EXTENSION OF HEALTH-CARE ELIGIBILITY.

The provisions of section 610(a)(1)(G) of title 38, United States Code, as such provisions relate to eligibility for hospital care on the basis of exposure to radiation, shall, notwithstanding any such provision, terminate no earlier than the date on which, pursuant to section 210 of this Act, the provisions of the amendments made by sections 203 and 204 of this Act terminate.

SEC. 208. REQUIREMENTS REGARDING VETERANS' ENVIRONMENTAL HAZARDS ADVISORY COMMITTEE REPORTS.

Section 6(d)(3) of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542) is amended by striking out "the Committee and the Administrator" and inserting in lieu thereof "the Committee, the Administrator, and the Committees on Veterans' Affairs of the Senate and House of Representatives".

SEC. 209. EFFECTIVE DATE.

(a) Except as provided in subsection (b), this title shall take effect on the date of the enactment of this Act.

(b) The amendments made by sections 203 and 204 shall take effect on January 1, 1988. No benefit may be paid for any period before such date by reason of the enactment of this Act.

SEC. 210. TERMINATION OF PROVISIONS.

The amendments made by sections 203 and 204 shall not apply with respect to any claim for benefits filed after September 30, 1991.

TITLE III—HEALTH CARE

PART A—HEALTH-CARE PROGRAMS

SEC. 301. SERVICES TO OVERCOME SERVICE-CONNECTED DISABILITIES AFFECTING PROCREATION.

Clause (A) of section 601(6) is amended to read as follows:

"(A)(i) surgical services, (ii) services to achieve pregnancy in a veteran or a veteran's spouse where such services are necessary to overcome a service-connected disability impairing the veteran's procreative ability, (iii) dental services and appliances as described in sections 610 and 612 of this title, (iv) optometric and podiatric services, (v) (in the case of a person otherwise receiving care or services under this chapter) preventive health-care services as defined in section 662 of this title, (vi) (except under the conditions described in section 612(f)(1)(A)(i) of this title) wheelchairs, artificial limbs, trusses and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as the Administrator determines to be reasonable and necessary, and (vii) travel and incidental expenses pursuant to the provisions of section 111 of this title; and".

SEC. 302. FEE-BASIS AUTHORITY EXPANSION.

(a) Section 603(a) is amended—

(1) in clause (3), by inserting "or nursing home care under section 620 of this title" after "facility" the first time it appears;

(2) in clause (6), by striking out "or" at the end;

(3) in clause (7), by striking out the period at the end and inserting in lieu thereof "; or"; and

(4) by adding at the end the following new clause:

"(8) diagnostic services (on an inpatient or outpatient basis) for observation or examination of a person to determine eligibility for a benefit or service under laws administered by the Veterans' Administration.".

SEC. 303. REPORT ON USE OF CONTRACT-CARE AUTHORITIES.

Section 201(b) of the Veterans' Health Care Amendments of 1979 (Public Law 96-22; 93 Stat. 54) is amended by striking out all after "implementation of" and inserting in lieu thereof "sections 603 and 620 of title 38, United States Code, and on the numbers of veterans provided contract treatment (and the average cost and duration thereof) in each State (as defined in section 101(20) of title 38, United States Code) in each of the categories described in—

"(1) the following provisions of subsection (a) of such section 603: subclauses (A) and (B) of clause (1); subclauses (A), (B), and (C) of clause (2); clause (3); clause (4); clause (5), with a breakdown showing inpatient care and outpatient treatment separately; clause (6); clause (7); and clause (8) (as added by section 302 of this Act), with a breakdown showing inpatient care and outpatient treatment separately; and

"(2) subsections (a) and (f) of such section 620.".

SEC. 304. CONTRACT CARE FOR SERVICE-CONNECTED DISABLED VETERANS OVERSEAS.

Section 624(b) is amended to read as follows:

"(b) The Administrator may furnish to any otherwise eligible veteran who is sojourning or residing abroad such hospital care and medical services as the Administrator determines are needed (A) for a service-connected disability, or (B) as part of a rehabilitation program under chapter 31 of this title.".

SEC. 305. ELIGIBILITY FOR DOMICILIARY CARE.

(a) In General.—Subsection (b) of section 610 is amended to read as follows:

"(b) The Administrator, through Veterans' Administration facilities, may furnish such domiciliary care as the Administrator determines is needed by a veteran for the purpose of receiving treatment or rehabilitation if the Administrator finds, pursuant to regulations which the Administrator shall prescribe, that the veteran—

"(1) has a service-connected disability, or

"(2) is incapacitated from earning a living and has no adequate means of support.".

(b) Conforming Amendment.—Section 622(g) is amended by striking out "sections 610(b)(2) and" and inserting in lieu thereof "section".

SEC. 306. PILOT PROGRAM OF NONINSTITUTIONAL ALTERNATIVES TO INSTITUTIONAL CARE.

(a) Establishment of Pilot Program.—Subchapter II of chapter 17 is amended by adding at the end the following new section:

"§ 620D. Noninstitutional alternatives to institutional care; pilot program

"(a)(1) The Administrator, during the period beginning January 1, 1988, and ending December 31, 1991, and subject to subsection (c) of this section, shall conduct a pilot program under which veterans eligible under this chapter for and otherwise in need of hospital, nursing home, or domiciliary care will be furnished medical, rehabilitative, and health-related services in noninstitutional settings at not less than five nor more than ten demonstration project sites.

"(2) In selecting veterans for participation in the program, the Administrator shall accord priority to veterans who have service-connected disabilities, to veterans who are sixty-five years of age or older, to veterans who are totally and permanently disabled, and to veterans who are suffering from Alzheimer's disease or other forms of dementia.

"(b)(1)(A) In the conduct of the program, the Administrator shall (i) furnish appropriate health-related services solely through contracts with appropriate public and private agencies that provide such services, and (ii) in the case of each veteran furnished services under the program, appoint a Veterans' Administration health-care employee to furnish case management services.

"(B) For the purposes of subparagraph (A) of this paragraph, 'case management' includes the coordination and facilitation of all services furnished to a veteran by the Veterans' Administration, either directly or through contract, including, but not limited to, screening, assessment of needs, planning, referral (including referral for services to be furnished by the Veterans' Administration, either directly or through a contract, or by an entity other than the Veterans' Administration) monitoring, reassessment, and follow up.

"(2) In order to evaluate the cost-effectiveness of utilizing certain health services of agencies other than the Veterans' Administration in cases in which no Veterans' Administration facility in the vicinity of a demonstration project provides such services, the Administrator, in not more than two of the demonstration projects, may utilize appropriate health services of appropriate public and private agencies that furnish such services.

"(3) The Administrator may provide in-kind assistance (through the services of Veterans' Administration employees and the sharing of other Veterans' Administration resources) to a facility furnishing services to veterans under subparagraph (1)(A)(i) of this subsection. Any such in-kind assistance shall be provided under a contract between the Veterans' Administration and the facility concerned. The Administrator may provide such assistance only for use solely in the furnishing of appropriate services under this section and only if, under such contract, the Veterans' Administration receives reimbursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Veterans' Administration facility that provided the assistance.

"(c) The total cost of conducting the pilot program under this section shall not exceed 60 percent of the cost that would have been incurred by the Veterans' Administration during the period of the pilot program if the veterans furnished services under the pilot program had been furnished, instead, nursing home care under section 610 of this title. In any fiscal year, the cost of carrying out the pilot program shall not exceed 65 percent of the cost that would have been so incurred during such year in furnishing the veterans who received services under the pilot program with nursing home care under such section 610.

"(d) Not later than April 1, 1991, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report setting forth the Administrator's evaluation, findings, and conclusions regarding the pilot program, and its results for the participating veterans, during its first 36 months. The report shall include a description of the conduct of the program (including a description of the veterans furnished services and of the services furnished under the pilot program), and any plans for administrative action, and any recommendations for legislation, that the Administrator considers appropriate to include in the report.".

"(b) Clerical Amendment.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 620C the following new item:

"620D. Noninstitutional alternatives to institutional care; pilot program.".

SEC. 307. COMMUNITY NURSING HOME CARE IN ALASKA AND HAWAII.

Clause (A) of section 620(a)(2) is amended to read as follows:

"(A) the amount equal to 45 percent of the cost of care (as determined annually by the Administrator)—

"(i) (except as provided in subclause (ii) of this clause) furnished by the Veterans' Administration in a general hospital under the jurisdiction of the Administrator, or

"(ii) in the case of care in a State in which there are no general hospitals under such jurisdiction, furnished by a non-Veterans' Administration hospital under contract with the Veterans' Administration; or".

SEC. 308. ACQUIRED IMMUNE DEFICIENCY SYNDROME MATTERS.

(a) Confidentiality of Medical Records.—Section 4132 is amended—

(1) in subsection (a), by inserting "infection with the human immunodeficiency virus," after "alcohol abuse,";

(2) in subsection (b)—

(A) in paragraph (1), by striking out "pursuant to section 4134 of this title";

(B) in paragraph (2)—

(i) by redesignating subparagraph (C) as subparagraph (D); and

(ii) by inserting after subparagraph (B) the following new subparagraph (C):

"(C) In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the human immunodeficiency virus, to a Federal, State, or local government agency or instrumentality charged under Federal or State law with the protection of the public health or safety and to which such Federal or State law requires disclosure of such record if a qualified representative of such agency or instrumentality has made a written request that such record be provided as required pursuant to such law for a purpose authorized by Federal or State law.";

(3) in subsection (c), by striking out "(b)(2)(C)" and inserting in lieu thereof "(b)(2)(D)"; and

(4) in subsection (e)—

(A) by inserting "(1)" before "The";

(B) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively; and

(C) by adding at the end the following new paragraph:

"(2) The provisions of this section shall not prohibit any disclosure of information or records relating to any patient's or subject's infection with the human immunodeficiency virus that is required or authorized by a law having general applicability to federal health-care services programs.".

(b) Nondiscrimination.—(1)(A) Section 4133 is amended to read as follows:

"§ 4133. Nondiscrimination in the admission and treatment of certain individuals by Veterans' Administration health-care facilities

"Veterans eligible for treatment under chapter 17 of this title who are alcohol or drug abusers or are infected with the human immunodeficiency virus shall not be discriminated against in admission or treatment by any Veterans' Administration health-care facility solely because of their alcohol or drug abuse or dependency or because of their viral infection. The Administrator shall prescribe regulations for the enforcement of the nondiscrimination policy established by this section. Such regulations, with respect to the admission and treatment of alcohol or drug abusers, shall be prescribed in accordance with the provisions of section 3134 of this title.".

(B) The table of sections at the beginning of chapter 73 is amended by striking out the item relating to section 4133 and inserting in lieu thereof the following:

"4133. Nondiscrimination in the admission and treatment of certain individuals by Veterans' Administration health-care facilities.".

(2) Section 4134(a) is amended by striking out "section 4133 of this title," and inserting in lieu thereof "section 4133 of this title with respect to alcohol and drug abusers,".

(c) AIDS Prevention Information and Training.—(1)(A) The Administrator of Veterans' Affairs shall establish and carry out an acquired immune deficiency syndrome (hereafter referred to as "AIDS") information program for employees and consultants of the Veterans' Administration and beneficiaries of programs administered by the Veterans' Administration.

(B) The Administrator, in conducting the program under paragraph (1)—

(i) shall develop, in consultation with the Surgeon General of the United States and the Director of the Centers for Disease Control, publications and other materials containing information on AIDS, including information on the prevention of infection with the human immunodeficiency virus;

(ii) shall provide for periodic dissemination of publications (including the 1986 Surgeon General's Report on AIDS) other materials containing such information;

(iii) shall make publications and other suitable materials containing such information readily available in public waiting rooms at Veterans' Administration facilities;

(iv) shall disseminate to Veterans' Administration substance abuse treatment personnel and each person being furnished treatment by the Veterans' Administration for drug abuse, information (including the 1986 Surgeon General's Report on AIDS) on the risk of transmission of the human immunodeficiency virus associated with intravenous drug abuse; and

(v) shall disseminate, to each veteran-patient believed to be at high risk for AIDS, information (including the 1986 Surgeon General's Report AIDS) on preventing the transmission of the human immunodeficiency virus.

(2) The Administrator shall establish and carry out a program that provides for education, training, and other activities (including continuing education and infection control programs) regarding AIDS and the human immunodeficiency virus designed to improve the effectiveness and safety of health-care personnel and health-care support personnel involved in the furnishing of care under programs administered by the Veterans' Administration.

(d) Restriction on Testing for Infection with the Human immunodeficiency Virus.—(1) The Administrator of Veterans' Affairs may not conduct a widespread testing program to determine infection with the human Immunodeficiency virus in any fiscal year unless funds have been appropriated to the Veterans' Administration specifically for the conduct of such program in such fiscal year.

(2) For the purpose of this subsection, the term "widespread testing program" means a program for the testing of any category of Veterans' Administration health-care patients to determine whether such patients are infected with the human immunodeficiency virus, but such term does not include any program for offering testing and counseling to patients who are receiving treatment from the Veterans' Administration for intravenous drug abuse, who are receiving treatment for a disease associated with the human immunodeficiency virus, or who are otherwise at high risk for infection with such virus.

SEC. 309. RULES AND REGULATIONS RELATING TO HOSPITAL, NURSING HOME, DOMICILIARY AND MEDICAL CARE.

The text of section 621 is revised to read as follows:

"The Administrator shall prescribe all rules and regulations which are necessary and appropriate to govern the furnishing of hospital, nursing home, and domicilary care and medical services under laws administered by the Veterans' Administration and which are consistent therewith (including such rules and regulations as are necessary and appropriate in order to promote good conduct on the part of persons who are receiving such care or services in Veterans' Administration facilities), except that the Administrator may prescribe, in such rules and regulations, limitations in connection with the furnishing of such care during a period of national emergency (other than a period of war or an emergency described in section 5011A of this title).".

SEC. 310. INCREASE IN PER DIEM RATES FOR CARE IN STATE HOMES.

(a) In general.—(1) Section 641 is amended—

(A) in subsection (a), by striking out clauses (1) through (3) and inserting in lieu thereof:

"(1) $8.70 for domiciliary care; and

"(2) $20.35 for nursing home and hospital care,"; and

(B) by adding at the end the following new subsection:

"(d) Whenever the Administrator makes a determination pursuant to section 620(a)(2)(A) of this title that the cost of care furnished by the Veterans' Administration in a general hospital under the direct jurisdiction of the Administrator has increased, the Administrator may, effective no earlier than the date of such determination, increase the rates paid under subsection (a) of this section by a percentage not greater than the percentage by which the Administrator has determined that such cost of care has increased.".

(2) Payments pursuant to the amendments made by subsection (a)(1) shall be subject to the availability of appropriations.

(b) Effective Dates.—(1) The amendment made by subsection (a)(1)(A) shall take effect on October 1, 1987.

(2) The amendment made by subsection (a)(1)(B) shall take effect on October 1, 1988.

SEC. 311. CONDITIONAL APPROVALS OF APPLICATIONS FOR STATE HOME GRANTS.

Section 5035(b) of title 38, United States Code, is amended—

(1) in the first sentence of paragraph (4)—

(A) by inserting "(including projects that have been conditionally approved under paragraph (6) of this subsection)" after "projects"; and

(B) by striking out "July 1" and inserting in lieu thereof "September 30"; and

(2) by adding at the end the following new paragraphs:

"(6)(A) The Administrator may conditionally approve a project, conditionally award a grant for the project under this section, and obligate funds for the grant if the Administrator determines that the project drawings and specifications submitted with the application for the grant are at least 80 percent complete and that the State submitting the application will meet all the requirements referred to in paragraph (1)(A) of this subsection not later than 180 days after the date on which the Administrator conditionally approves the project. The Administrator may finalize the award of the grant and pay the amount of the grant to such State only if the State has met all of such requirements.

"(B) If a State does not take the action necessary to meet all of the requirements referred to in paragraph (1)(A) of this subsection not later than 180 days after the date on which the Administrator conditionally approves the application, the Administrator shall rescind the award of a grant to the State in connection with the application and shall deobligate the funds previously obligated in connection with the application.

"(7)(A) Subject to subparagraph (B) of this paragraph, the Administrator may increase the amount of any grant awarded to any State for a project under this section by an amount by which the Administrator determines that the estimated cost of the construction or acquisition has increased from the estimated cost on which the Administrator based the determination to award the grant, without regard to the position of such project on the list established under paragraph (4) of this subsection, if the Administrator determines that the grant was awarded before the State entered into a contract for the construction or acquisition provided for in such project.

"(B) A grant may not be increased under subparagraph (A) of this paragraph by more than 10 percent of the amount of the grant intitially awarded for such project, and the amount of such grant, as increased, may not exceed 65 percent of the cost of the project.".

SEC. 312. MEDICAID TREATMENT OF PER DIEM PAYMENTS TO STATE VETERANS' HOMES

Section 641 is further amended by adding at the end the following new subsection:

"(e) Payments made to States pursuant to this section—

"(1) shall not be considered to be a third-party liability for any purpose under section 1902(a)(25) of title XIX of the Social Security Act; and

"(2) shall, for purposes of determining under such title XIX the reasonable costs of services provided by a State home, not be deducted directly or indirectly from the operating or other costs of such State home.".

SEC. 313. THERAPEUTIC AND REHABILITATION REVOLVING FUND RESTORATION.

(a) Notwithstanding subsection (b) of section 601 of the Veterans' Benefits Improvements and Health-Care Authorization Act of 1986 (Public Law 99-576), clause

(2) of subsection (b) of section 113 of title 38, United States Code, as added by subsection (a) of section 601 of such Act, shall apply with respect to a sequestration order issued, or a sequestration law enacted, for a fiscal year after fiscal year 1985.

(b) The Secretary of the Treasury shall take such action as is necessary to implement subsection (a) and shall, not later than 60 days after the date of the enactment of this Act, report to the appropriate Committees of the Congress on the actions taken by the Secretary pursuant to this section.

SEC. 314. VETERANS' ADMINISTRATION RECREATION SPONSORSHIP AUTHORITY.

Section 612 is amended by adding at the end the following new subsection:

"(l)(1) The Administrator may provide or, in cooperation with any organization named in or approved under section 3402 of this title, assist in providing recreational activities which would further the rehabilitation of disabled veterans if—

"(A) such activities are available to disabled veterans on a national basis, and

"(B) a significant percentage of the individuals participating in such activities are eligible for rehabilitative services under this chapter.

"(2) The Administrator, notwithstanding any other provision of law, may accept contributions of funds and other assistance from any appropriate source for the support of such activities and may permit any individual, organization, or corporation which has made such a contribution, or provided such assistance, to advertise the activity or their participation therein, if—

"(A) the Administrator has approved any such advertisement, and

"(B) such advertisement contains a clear statement that any product, project, or commercial line of endeavor has not been endorsed by the Veterans' Administration.".

SEC. 315. PILOT PROGRAM OF MOBILE HEALTH-CARE CLINICS.

(a)(1) In order to evaluate the impact on access to Veterans' Administration health-care services by eligible veterans residing in isolated rural areas which are at least 100 miles from the nearest Veterans' Administration health-care facility, the Administrator of Veterans' Affairs shall conduct a pilot program for a period of not less than 24 months, in four geographic regions, pursuant to which eligible veterans shall be furnished health-care services at a location convenient to their residences by Veterans' Administration employees furnishing such services through the use of appropriately equipped mobile health-care clinics.

(2) The pilot project mandated by paragraph (1) shall be carried out utilizing at least one mobile health-care clinic in each of the following geographic areas of the United States: the Northeast, the Midwest, the South, and the West.

(b) The amount spent in any 12-month period to carry out the pilot program mandated by subsection (a) of this section may not exceed $2,500,000.

(c) The Administrator shall conduct an evaluation of the efficacy and cost-effectiveness of furnishing care to eligible veterans utilizing mobile health-care clinics pursuant to subsection (a).

(d) Not later than 20 months after the beginning of the pilot program carried out pursuant to subsection (a), the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an interim report on the implementation, operation, and results of the first 17 months' experience under the pilot program. Not later than 27 months after the beginning of the pilot program, the Administrator shall submit to such Committees a final such report. Such report shall include—

(1) information on the health-care services, and a detailed breakdown of the costs thereof, that were furnished under such pilot program;

(2) information on the veterans furnished services under the pilot program, with a detailed breakdown with respect to service connection age, prior access to and utilization of Veterans' Administration care and services, and the financial need of such veterans;

(3) the preliminary or final results of the Administrator's evaluation; and

(4) any plans for administrative action, and any recommendation for legislation, that the Administrator considers appropriate to include in the report.

SEC. 316. MENTAL ILLNESS RESEARCH.

Section 4101(c)(1) is amended by striking out the parenthetical phrase and inserting in lieu thereof "(including biomedical, mental illness, prosthetic, and health-care-services research, and stressing research into (A) spinal cord injuries and diseases and other disabilities that lead to paralysis of the lower extremities, and (B) post-traumatic stress disorder, dementias, and other mental disorders)".

SEC. 317. REPORT ON CERTAIN ACTIVITIES RELATING TO TRAINING IN GERIATRICS OF MEDICAL AND OTHER HEALTH-PROFESSIONAL SCHOOLS AFFILIATED WITH THE VETERANS' ADMINISTRATION.

(a) The Congress makes the following findings:

(1) In view of the estimate that, by the year 2030, the percentage of the United States' population that is age sixty-five and older will have risen to nearly 22 percent from the current level of approximately 12 percent, responding appropriately to the future health-care needs of the increasing elderly population of the United States represents one of our Nation's greatest challenges.

(2) Because veterans cluster in age groups related to periods of major conflicts, the aging of the general population is accelerated in the case of veterans, and veterans of War II and the Korean conflict will enter in the near future the age range with the greatest need for health and health-related services and constitute a very significant portion of the total veteran population.

(3) In response to the needs of the growing number of older veterans, the Veterans' Administration, pursuant to Congressional guidance and direction, has increased its efforts with respect to the development of new approaches to furnishing such care, the training of health-care professionals in the care of older patients, and the carrying out and funding of research into diseases and disabilities associated with aging and into the aging process.

(4) As a result of the Veterans' Administration's affiliation arrangements with one hundred and one medical schools, fifty-nine dental schools, approximately five hundred nursing schools, and approximately three hundred and fifty other health-care professional training institutions through which over one hundred thousand students and trainees receive training in Veterans' Administration facilities annually and the important role which those arrangements fulfill in those schools carrying out their education and training missions, the Veterans' Administration has a vital opportunity to improve efforts to train health-care professionals in the care of older patients and to heighten research activity into diseases and disabilities associated with aging and into the aging process.

(5) As an indication of the importance of the Veterans' Administration's role in promoting efforts by affiliated health-care professional training institutions, the Congress in Public Law 96-330, provided that no Veterans' Administration medical center could be designated as the site for a Geriatric Research, Education, and Clinical Center—centers of excellence in the area of aging research, education, and treatment—unless the Veterans' Administration medical center has arrangements with affiliated schools which provide education and training in geriatrics and which provide medical residents and nursing or allied health personnel with training and education in geriatrics through regular rotation through all bed components of the Veterans' Administration medical center.

(b)(1) In light of the findings in subsection (a), not later than March 1, 1988, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding the Veterans' Administration's activities, and the success of those activities, designed to promote increased efforts by affiliated medical and other health-professional training schools (1) in training heath-care professionals to care for older patients, and (2) in research into the aging process and diseases and disabilities associated with aging.

(2) The report shall include—

(A) information, for each academic year from 1980-1981 through 1986-1987, on the number of institutions affiliated with the Veterans' Administration (hereinafter in this paragraph referred to as "affiliated institutions"), broken down by type of institution and type of training, that—

(i) have a program through which students or trainees receive education and training in geriatrics through regular rotation through Veterans' Administration medical centers, nursing homes, domiciliary care facilities, or other units providing extended care to veterans; or

(ii) have a formal program providing education and training in geriatrics; or

(iii) have both such programs;

(B) information on the number of affiliated institutions (broken down by type of institution) that are planning to establish programs as described in clause (A), together with a timetable for such actions;

(C) estimates of the costs, both to the Veterans' Administration and to the affiliated institutions, of the programs described in clauses (A) and (B);

(D) estimates of the number of Veterans' Administration patients receiving care or who will receive care from the students or trainees participating in programs described in clauses (A)(i) and (B);

(E) a description of the role of the Veterans' Administration in encouraging the establishment and continuation of the programs described in clause (A); and

(F) the views of the Administrator on the feasibility and desirability of requiring, as a condition of the Veterans' Administration's entering into or continuing an affiliation agreement with a health-care professional training institution, the establishment with such institution of the appropriate type of arrangements described in clause (C) (i) or (ii) of section 4101(f) of title 38, United States Code.

PART B—HEALTH-CARE ADMINISTRATION

Subpart 1—Health-Care Personnel

SEC. 321. ORGANIZATION OF THE DEPARTMENT OF MEDICINE AND SURGERY.

(a) OFFICE OF THE CHIEF MEDICAL DIRECTOR.—Section 4103(a) is amended—

(1) by inserting "persons, each of whom shall be qualified in the administration of health services" after "following";

(2) in clause (3), by striking out "shall be a qualified doctor of medicine" and inserting in lieu thereof "shall be a person with specified qualifications";

(3) in clause (4)—

(A) in the first sentence, by striking out "who shall be" the first place it appears and inserting in lieu thereof "all of whom shall be persons with specified qualifications,";

(B) in the second sentence, by striking out "qualified in the administration of health services who are not doctors of medicine, dental surgery, or dental medicines" and inserting in lieu thereof "who are persons with specified qualifications solely by reason of clause (ii) of the last sentence of this subsection"; and

(C) in the last sentence, by striking out "qualified physician" and inserting in lieu thereof "person with specified qualifications";

(4) in clause (5)—

(A) by inserting a comma and "all of whom shall be persons with specified qualifications," after "Directors";

(B) by striking out the commas after "Administrator" and "Director"; and

(C) by striking out the second sentence;

(5) in clause (6), by inserting "upon the recommendation of the Chief Medical Director" after "Administrator";

(6) in clause (7)—

(A) by inserting ", each of whom shall be licensed in the appropriate service field" after "Optometric Service"; and

(B) by inserting "upon the recommendation of the Chief Medical Director" after "Administrator"; and

(7) by adding at the end the following new sentence:

"For the purpose of this subsection, the term 'person with specified qualifications' means (i) a person meeting the requirements set forth in clause (1), (2), (3), (5), (6), (7), or (8) of subsection (a) of section 4105 of this title, or (ii) a person who meets or has met the requirements set forth in clause (4) of such subsection.".

(b) TECHNICAL AMENDMENT.—Section 4103(b)(3) is amended by inserting a comma after "reappointed" and after "extended" and by striking out the comma after "reappointment".

SEC. 322. MAKING NURSE ADDITIONAL-PAY AUTHORITIES AVAILABLE TO ASSIST IN RECRUITMENT AND RETENTION OF PHARMACISTS AND OCCUPATIONAL THERAPISTS.

(a) Section 4104 is amended—

(1) in paragraph (2), by striking out "Pharmacists" and all that follows through "therapists" and inserting in lieu thereof "Psychologists (other than those described in paragraph (3) of this section)"; and

(2) in paragraph (3)—

(A) by striking out "and"; and

(B) by inserting ", pharmacists, and occupational therapists" after "nurses".

(b) Section 4107(f) is amended in the second sentence—

(1) by striking out "or licensed" and inserting in lieu thereof "licensed"; and

(2) inserting "pharmacists, or occupational therapists," after "nurses,".

SEC. 323. DISCIPLINARY MATTERS AS TO CERTAIN APPOINTEES.

Section 4106(g) is amended by adding at the end the following new paragraph:

"(3) Notwithstanding any other provision of this title or other federal law, all matters relating to adverse actions, disciplinary actions, and grievance procedures involving individuals appointed to such positions shall be addressed under the provisions of title 5 as though such individuals had been appointed under such title.".

SEC. 324. DISCIPLINARY ACTIONS AND GRIEVANCES.

(a) Section 4110 is amended—

(1) in subsection (a)—

(A) by striking out "of inaptitude, inefficiency, or misconduct" and inserting in lieu thereof "in disciplinary actions for performance or conduct during tenure with the Veterans' Administration, except with respect to matters described in subsection (f) of this section,"; and

(B) by adding at the end the following new sentence: "The Chief Medical Director may delegate the function of appointing a board to an employee of the Department of Medicine and Surgery who is not involved in deciding whether or not to file charges against the employee and who is not subordinate to any official involved in so deciding.";

(2) in the first sentence of subsection (d), by striking out "suitable" and all that follows and inserting in lieu thereof "that the proposed disciplinary action be sustained or modified within limitations prescribed by the Administrator."; and

(3) by adding at the end the following new subsection:

"(f)(1) An employee against whom disciplinary action (on any grounds other than grounds involving questions of clinical competence in matters involving direct patient-care activities) consisting of a suspension for 14 days or less, reassignment or reduction in rank without a reduction in basic pay, reprimand, or admonishment is proposed is entitled to—

"(A) an advance written notice stating the specific reasons for the proposed action;

"(B) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(C) be represented by an attorney or other representative; and

"(D) a written decision and the specific reasons therefor at the earliest practicable date.

"(2) Actions taken under paragraph (1) of this subsection shall be subject to review, at the discretion of the employee, under either the provisions of section 4120A of this title or an agency review procedure to be established by the Administrator, but not under both. Any such agency review procedure established by the Administrator shall include—

"(A) an informal review of the decision on the disciplinary action by an official of a higher level than the official who made the decision;

"(B) a prompt decision by such higher level official and a right to formal review by an impartial examiner within the agency;

"(C) a prompt report of the findings and recommendations by the impartial examiner; and

"(D) a prompt review of the examiner's findings and recommendations, together with any comments by the employee and the agency on such findings and recommendations, by an official of a higher level than the official who conducted the review pursuant to clause (A) of this paragraph.".

(b) Subchapter I of chapter 73 is further amended by adding at the end the following new section:

"§ 4120A. Grievances and certain disciplinary reviews

"(a) For the purpose of resolving (1) grievances of employees appointed under authority of this title who are members of a bargaining unit recognized under chapter 71 of title 5, or (2) disciplinary actions as described in subsection 4110(f)(1) of this title involving such employees, the Administrator shall authorize review of agency actions on grievances or disciplinary actions under the procedures negotiated under the authority of chapter 71 of title 5.

"(b) For the purpose of resolving (1) grievances of supervisors and employees appointed under authority of this chapter who are not members of a bargaining unit recognized under chapter 71 of title 5, or (2) disciplinary actions as described in subsection 4110(f)(1) of this title involving such employees, the Administrator shall, at the request of the employee, authorize review of agency action on such grievances or disciplinary action pursuant to the procedures negotiated for such purposes under the authority of such chapter 71 for the Veterans' Administration facility with respect to which the grievance is filed or at which the disciplinary action is taken. In the case of a facility at which there is no negotiated procedure in effect, the Administrator, for purposes of this subsection, shall utilize the procedure negotiated with the national labor organization having the largest membership of Veterans' Administration employees. In the case of an employee who is not a bargaining unit member and who appeals under this subsection, such employee may have representation of his or her choosing, not provided by a union, during such review and the employee and the agency each shall bear half the expense of any arbitration.

"(c) For the purposes of this section, the term 'grievance' means a matter of concern by an employee appointed under this title (as may be negotiated under authority of chapter 71 of title 5) with respect to his or her employment but does not include matters similar to those excluded from grievance procedures under chapter 71 of title 5.".

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 is amended by adding at the end of subchapter I the following new item:

"4120A. Grievances and certain disciplinary reviews."

SEC. 325. PREMIUM PAY FOR SATURDAY WORK.

Section 4107(e) is amended—

(1) in paragraph (3), by striking out "Saturday" and inserting in lieu thereof "Friday"; and

(2) in paragraph (10)—

(A) in subparagraph (A), by striking out "Administrator—" and all that follows and inserting in lieu thereof "Administrator may increase the rates of additional pay authorized under paragraphs (2) through (8) of this subsection.";

(B) in subparagraph (B), by striking out "(A)(i)" and inserting in lieu thereof "(A)"; and

(C) by repealing subparagraph (C).

SEC. 326. EDUCATIONAL ASSISTANCE PROGRAM.

(a) Subchapter IV of chapter 73 is repealed.

(b) Part V is amended by adding at the end the following new chapter:

"CHAPTER 76—VETERANS' ADMINISTRATION HEALTH PROFESSIONAL EDUCATIONAL ASSISTANCE PROGRAM

"SUBCHAPTER I—GENERAL

"Sec.
"4301. Establishment of program; purpose.
"4302. Eligibility; application; written contract.
"4303. Breach of contract; liability; waiver.
"4304. Exemption of educational assistance payments from taxation.
"4305. Program subject to availability of appropriations.

"SUBCHAPTER II—VETERANS' ADMINISTRATION HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

"4311. Duration of program.
"4312. Eligibility; application; written contract.
"4313. Obligated service.
"4314. Breach of contract; liability.

"SUBCHAPTER III—VETERANS' ADMINISTRATION HEALTH PROFESSIONAL TUITION REIMBURSEMENT PROGRAM

"4321. Eligibility; application; written contract.
"4322. Obligated service.
"4323. Breach of contract; liability.
"4324. Allocation and distribution of funding.

"SUBCHAPTER I—GENERAL

"§ 4301. Establishment of program; purpose

"There is hereby established a program to be known as the Veterans' Administration Health Professional Educational Assistance Program (hereinafter in this chapter referred to as the "Educational Assistance Program"), which shall comprise (1) a scholarship program as provided for in subchapter II of this chapter, to be known as the Veterans' Administration Health Professional Scholarship Program (hereinafter in this chapter referred to as the "Scholarship Program"), and (2) a tuition reimbursement program as provided for in subchapter III of this chapter, to be known as the Veterans' Administration Health Professional Tuition Reimbursement Program (hereinafter in this chapter referred to as the "Tuition Reimbursement Program"). The purpose of the Educational Assistance Program is to assist in providing an adequate supply of trained health-care personnel who provide either direct patient-care services or services incident to direct patient-care services for the Veterans' Administration and for the Nation.

"§ 4302. Eligibility; application

"(a) To be eligible to participate in the Educational Assistance Program, an individual, in addition to meeting the criteria specified in section 4312 of this title for participation in the Scholarship Program or in section 4321 of this title for participation in the Tuition Reimbursement Program, must—

"(1) be accepted for enrollment or be currently enrolled as a student (A) in an accredited (as determined by the Administrator) educational institution in a State, and (B) in a course of training offered by such institution and approved by the Administrator, leading toward completion of any degree in an appropriate discipline (as determined by the Administrator);

"(2) submit an application to the Administrator for participation in the Educational Assistance Program;

"(3) sign and submit to the Administrator, at the time of submission of such application, a written contract (described in subsection (e) of this section) to accept payment of educational assistance and to serve a period of obligated service as provided in section 4313 of this title for the scholarship program or in section 4322 of this title for the Tuition Reimbursement Program; and

"(4) at the time of submission of such application, not be obligated under any other Federal program to perform service after completion of the course of study or program of such individual referred to in clause (1) of this subsection.

"(b)(1) In distributing application forms and contract forms to individuals desiring to participate in the Educational Assistance Program, the Administrator shall include with such forms—

"(A) a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Administrator, including in the summary a clear explanation of the damages to which the United States is entitled under section 4314 of this title with respect to the Scholarship Program or section 4323 of this title with respect to the Tuition Reimbursement Program, if the individual breaches the contract; and

"(B) a full description of the terms and conditions that would apply to the individual's participation in the Educational Assistance Program and service in the Department of Medicine and Surgery.

"(2) The Administrator shall make such application forms and other information available to individuals desiring to participate in the Educational Assistance Program on a date sufficiently early to allow such individuals adequate time to prepare and submit such forms.

"(c) In selecting applicants for acceptance in the Educational Assistance Program, the Administrator, in addition to according priority as set forth in section 4312(b)(1) of this title with respect to the Scholarship Program or in section 4321(b) of this title with respect to the Tuition Reimbursement Program, shall give priority to the applications of individuals who have previously received educational assistance under this program and have not completed the program of education undertaken under such section.

"(d)(1) An individual becomes a participant in the Educational Assistance Program only upon the Administrator's approval of the indivdual's application submitted under subsection (a)(2) of this section and the Administrator's acceptance of the contract signed by the individual under subsection (a)(3) of this section.

"(2) The Administrator shall provide written notice to an individual promptly upon the Administrator's approval under paragraph (1) of this subsection of the individual's participation in the Educational Assistance Program.

"(e) The written contract (referred to in subsection (a)(3) of this section) between the Administrator and a participant in the Educational Assistance Program, in addition to the provisions specified in section 4312(b) of this title with respect to the Scholarship Program or in section 4321(d) of this title with respect to the Tuition Reimbursement Program, shall contain—

"(1)(A) subject to clause (2) of this subsection, the Administrator's agreement—

"(i) to provide the participant with educational assistance as authorized in this chapter and specified in the agreement, and

"(ii) to afford the participant the opportunity for employment in the Department of Medicine and Surgery (subject to the availability of appropriated funds for such purpose and other qualifications established in accordance with section 4105 of this title); and

"(B) subject to clause (2) of this subsection, the participant's agreement—

"(i) to accept such educational assistance;

"(ii) to maintain enrollment and attendance in the course of training until completed; and

"(iii) while enrolled in such course, to maintain an acceptable level of academic standing (as determined by the educational institution offering such course of training under regulations prescribed by the Administrator);

"(2) a provision that any financial obligation of the United States arising out of a contract entered into under this chapter, and any obligation of the participant which is conditioned thereon, is contingent upon funds being appropriated for educational assistance under this chapter;

"(3) a statement of the damages to which the United States is entitled under section 4314 of this title with respect to the Scholarship Program or section 4323 of this title with respect to the Tuition Reimbursement Program, for the participant's breach of the contract; and

"(4) such other statements of the rights and liabilities of the Administrator and of the participant as may be appropriate and consistent with the provisions of this chapter.

"(f) The maximum amount of (1) the monthly stipend paid to a participant in the Scholarship Program, specified in section 4312(d)(1)(B) of this title and as previously adjusted (if at all) in accordance with this subsection, and (2) the maximum amount of tuition reimbursement provided to a participant in the Tuition Reimbursement Program, specified in section 4321(e) of this title and as previously adjusted (if at all) in accordance with this subsection, shall be increased by the Administrator for each school year ending in a fiscal year beginning after September 30, 1988, by an amount (rounded to the next highest multiple of $1) equal to the amount of such stipend or tuition reimbursement multiplied by the overall percentage (as set forth in the report transmitted to the Congress under section 5305 of title 5) of the adjustment (if such adjustment is an increase) in the rates of pay under the General Schedule made effective in the fiscal year in which such school year ends.

"(g) The Administrator shall report to Congress not later than March 1 of each year—

"(1) the number of students receiving educational assistance under the Educational Assistance Program, broken down to show the numbers of students receiving assistance under the Scholarship Program and the Tuition Reimbursement Progam separately, and the number of students enrolled in each type of health profession training under each program;

"(2) the education institutions providing such training to students in each program;

"(3) the number of applications filed under each program, by health profession category, during the school year beginning in such year and the total number of such applications so filed for all years in which the Educational Assistance Program (or predecessor program) has been in existence;

"(4) the average amounts of educational assistance provided per participant in the Scholarship Program and per participant in the Tuition Reimbursement Program;

"(5) the amount of tuition and other expenses paid, by health profession category, in the aggregate and at each educational institution for the school year beginning in such year and for prior school years;

"(6) the number of scholarships accepted, by health profession category, during the school year beginning in such year and the number, by health profession category, which were offered and not accepted; and

"(7) the number of participants who complete a course or course of training in each program each year and for all years such program (or predecessor program) has been in existence.

"(h) The Administrator shall prescribe regulations to carry out the Educational Assistance Program.

"§ 4303. Breach of contract; liability; waiver

"(a)(1) Any obligation under the Educational Assistance Program (or a written contract thereunder) of a participant in the Educational Assistance Program for service or payment of damages shall be canceled upon the death of the participant.

"(2) The Administrator shall prescribe regulations providing for the waiver or suspension of any obligation of a participant for service or payment under such Program (or a contract thereunder) whenever compliance by the participant is impossible due to circumstances beyond the control of the participant or whenever the Administrator determines that the waiver or suspension of compliance would be in the best interest of the Veterans' Administration.

"(3) Any obligation of a participant under such Program (or a contract thereunder) for payment of damages may not be released by a discharge in bankruptcy under title 11 before the expiration of the five-year period beginning on the first date the payment of such damages is due.

"(b) The Administrator, in cooperation with and with the consent of the heads of other relevant departments and agencies and with the consent of the participant or individual involved, may permit—

"(1) any period of obligated service required to be performed under this chapter to be performed in another Federal department or agency or in the Armed Forces; and

"(2) any period of obligated service required to be performed in another Federal department or agency or in the Armed Forces under another Federal health personnel educational assistance program to be performed in the Department of Medicine and Surgery.

"§ 4304. Exemption of educational assistance payments from taxation

"Notwithstanding any other law, any payment to, or on behalf of a participant in the Educational Assistance Program, for tuition, education expenses, or a stipend under this chapter shall be exempt from taxation.

"§ 4305. Program subject to availability of appropriations

"The authority of the Administrator to make payments under this chapter is effective for any fiscal year only to the extent that appropriated funds are available for such purposes.

"SUBCHAPTER II—VETERANS' ADMINISTRATION HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

"§ 4311. Duration of program

"The Administrator may not furnish scholarships to new participants in the Scholarship Program after September 30, 1992.

"§ 4312. Eligibility; application; written contract

"(a) To be eligible to participate in the Scholarship Program, an individual, in addition to meeting the requirements specified in section 4302 of this title, must be accepted for enrollment or be enrolled (as described in clause (1) of section 4302(a) of this title) as a full-time student, except that an individual who is a Veterans' Administration employee described in subsection (e)(1) of this section may be accepted as a participant if accepted for enrollment or enrolled (as described in clause (1) of section 4302(a) of this title) for study on less than a full-time but not less than a half-time basis. (Such a participant is hereinafter in this subchapter referred to as a "part-time student".)

"(b)(1) In selecting applicants who are pursuing a course of training in nursing for acceptance in the Scholarship Program, the Administrator, in addition to according priorities as set forth in section 4302(c) of this title, shall give priority to the applications of individuals who have completed three years of a four-year course of training leading to a baccalaureate degree.

"(2) Before awarding the initial scholarship in any course of training other than in medicine or nursing, the Administrator, not less than sixty days before awarding such scholarship, shall notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the Administrator's intent to award a scholarship in such course of training and of the reasons why the award of scholarships in such course of training is necessary to assist in providing for the Veterans' Administration an adequate supply of personnel in the health profession concerned.

"(c) The written contract referred to in section 4302(a)(3) of this title between the Administrator and a participant in the Scholarship Program, in addition to the requirements set forth in such section, shall contain—

"(1) the Administrator's agreement, subject to section 4302(e)(2) of this title, to provide the participant with a scholarship (described in subsection (d) of this section) for from one to four school years (or in a case in which an extension is granted under subsection (e)(3) of this section, the number of school years provided for as a result of such extension) during which period the participant is pursuing a course of training described in section 4302(a)(1)(B) of this title; and

"(2) subject to section 4302(e)(2) of this title, the participant's agreement—

"(A) to serve as a full-time employee in the Department of Medicine and Surgery for a period of time (hereinafter in this subchapter referred to as the 'period of obligated service') of two calendar years for each school year or part thereof for which the participant was provided a scholarship under the Scholarship Program (to be reduced, in the case of a participant who is a part-time student, in accordance with the proportion that the number of credit hours carried by such participant in any such school year bears to the number of credit hours required to be carried by a full-time student in the course of training being pursued by the participant, but in no event, to less than one year);

"(B) if the participant's period of obligated service is deferred under section 4313(b)(3)(A)(i) of this title, to serve any additional period of obligated service prescribed by the Administrator under section 4313(b)(4)(B) of this title; and

"(C) in the case of a participant who is a part-time student, to maintain employment, while enrolled in such course of training, as a Veterans' Administration employee permanently assigned to a Veterans' Administration health-care facility.

"(d)(1) A scholarship provided to a participant in the Scholarship Program for a school year under a written contract under the Scholarship Program shall consist of—

"(A) payment to, or (in accordance with paragraph (2) of this subsection) on behalf of, the participant of the amount of—

"(i) the tuition of the participant in such school year; and

"(ii) other reasonable educational expenses, including fees, books, and laboratory expenses; and

"(B) payment to the participant of a stipend of not in excess of $485 per month (adjusted in accordance with section 4302(f) of this title) for each of the twelve consecutive months beginning with the first month of such school year, except that a stipend may not be paid to a participant who is a full-time employee of the Veterans' Administration and the stipend of a participant who is a part-time student shall be adjusted as provided in subsection (e)(2) of this section.

"(2) The Administrator may contract with an educational institution in which a participant in the Scholarship Program is enrolled for the payment to the educational institution of the amounts of tuition and other reasonable educational expenses described in paragraph (1)(A) of this subsection. Payment to such an educational institution may be made without regard to subsections (a) and (b) of section 3324 of title 31.

"(e)(1) To be accepted as a participant as a part-time student, an individual must be a full-time Veterans' Administration employee permanently assigned to a Veterans' Administration health-care facility on the date on which such individual submits the application referred to in subsection (a)(2) of section 4302 of this title and on the date on which such individual becomes a participant in the Scholarship Program.

"(2) If a participant in the Scholarship Program is awarded a scholarship as a part-time student—

"(A) the maximum amount of the stipend payable to such participant under subsection (d)(1)(B) of this section shall be reduced in accordance with the proportion that the number of credit hours carried by such participant bears to the number of credit hours required to be carried by a full-time student in the course of training being pursued by the participant; and

"(B) a stipend may not be paid to such a participant under such subsection for any month during which such participant is not actually attending the course of training in which such participant is enrolled.

"(3) In the case of a participant who is a part-time student, the Administrator may extend the scholarship award period to a maximum of 6 school years if the Administrator determines that such an extension would be in the best interest of the United States.

"(f) Notwithstanding any other provision of law, participants in the Scholarship Program shall not by virtue of their participation in such program (1) be considered to be employees of the Federal Government, or (2) be counted against any personnel ceiling affecting the Department of Medicine and Surgery.

"§ 4313. Obligated service

"(a) Each participant in the Scholarship Program shall provide service in the full-time clinical practice of such participant's profession or in another health-care position, in an assignment or location as determined by the Administrator, as a full-time employee of the Veterans' Administration for the period of obligated service provided in the contract of such participant entered into under section 4302(a)(3) of this title.

"(b)(1) Not later than sixty days prior to (A) the date described in paragraph (3) of this subsection with respect to a participant in the Scholarship Program who is a full-time student, or (B) the date provided for under paragraph (5) of this subsection with respect to a participant who is a part-time student, the Administrator shall notify the participant of the date described in the applicable paragraph for the beginning of such participant's period of obligated service.

"(2) As soon as possible after the applicable date described in paragraph (3) of this subsection or provided for under paragraph (5) of this subsection, the Administrator shall—

"(A) in the case of a participant who is not a full-time employee in the Department of Medicine and Surgery, appoint such participant as such an employee; and

"(B) in the case of a participant who is such an employee but is not serving in a position for which such participant's course of training prepared such participant, assign such participant to such a position.

"(3)(A)(i) With respect to a participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, the date for the beginning of the participant's period of obligated service is the date upon which the participant becomes licensed to practice medicine, osteopathy, dentistry, optometry, or podiatry, as the case may be, in a State, except that the Administrator may, at the request of such participant, defer such date until the end of the period of time required for the participant to complete an internship or residency or other advanced clinical training. If the participant requests such a deferral, the Administrator shall notify the participant that such deferral could lead to an additional period of obligated service in accordance with paragraph (4) of this subsection.

"(ii) No such period of internship or residency or other advanced clinical training shall be counted toward satisfying a period of obligated service under this subchapter.

"(B) With respect to a participant receiving a degree from a school of nursing, the date for the beginning of the participant's period of obligated service is the later of (i) the date upon which the participant completes such participant's courses of training, or (ii) the date upon which the participant becomes registered as a graduate nurse in a State.

"(C) With respect to a participant receiving a degree from an institution other than a school of medicine, osteopathy, dentistry, optometry, podiatry, or nursing, the date for the beginning of the participant's period of obligated service is the date upon which the participant completes the course of training leading to such degree.

"(4) Any participant whose period of obligated service is deferred under paragraph (3)(A) of this subsection—

"(A) shall be required to undertake internship or residency or other advanced clinical training in an accredited program in an educational institution which is an affiliated institution (as defined in section 4108(c)(1) of this title) and with respect to which the affiliation agreement provides that all or part of the internship or residency or other advanced clinical training will be undertaken in a Veterans' Administration health-care facility; and

"(B) may, at the discretion of the Administrator and upon the recommendation of the Chief Medical Director, incur an additional period of obligated service—

"(i) at the rate of one-half of a calendar year for each year of internship or residency or other advanced clinical training (or a proportionate ratio thereof), if the internship, residency, or advanced clinical training is in a medical specialty necessary to meet the health care requirements of the Veterans' Administration (as determined under regulations prescribed by the Administrator); or

"(ii) at the rate of three-quarters of a calendar year for each year of internship or residency or other advanced clinical training (or a proportionate ratio thereof), if the internship, residency, or advanced clinical training is not in a medical specialty necessary to meet the health care requirements of the Veterans' Administration (as determined under regulations prescribed by the Administrator).

"(5) The Administrator shall by regulation prescribe the date for the beginning of the period of obligated service of a participant who was a part-time student. Such regulations shall prescribe terms as similar as practicable to the terms set forth in paragraph (3) of this subsection.

"(c)(1) Except as provided in paragraph (2) of this subsection, a participant in the Scholarship Program shall be considered to have begun serving such participant's period of obligated service—

"(A) on the date, after such participant's course completion date, on which such participant (in accordance with subsection (a) of this section) is appointed under this chapter as a full-time employee in the Department of Medicine and Surgery; or

"(B) if the participant is a full-time employee in the Department of Medicine and Surgery on such course completion date, on the date thereafter on which such participant is assigned to a position for which such participant's course of training prepared such participant.

"(2) A participant in the Scholarship Program who on such participant's course completion date is a full-time employee in the Department of Medicine and Surgery serving in a capacity for which such participant's course of training prepared such participant shall be considered to have begun serving such participant's period of obligated service on such course completion date.

"(3) For the purposes of this subsection, the term 'course completion date' means the date on which a participant in the Scholarship Program completes such participant's course of training under the program.

"§ 4314. Breach of contract; liability

"(a) A participant in the Scholarship Program (other than a participant described in subsection (b) of this section) who fails to accept payment, or instructs the educational institution in which the participant is enrolled not to accept payment, in whole or in part, of a scholarship under the contract entered into under section 4302(a)(3) of this title, shall, in addition to any period of obligated service or other obligation or liability under the contract, be liable to the United States for the amount of $1,500 as liquidated damages.

"(b) A participant in the Scholarship Program who—

"(1) fails to maintain an acceptable level of academic standing in the educational institution in which the participant is enrolled (such level determined by the educational institution under regulations prescribed by the Administrator),

"(2) is dismissed from such education institution for disciplinary reasons,

"(3) voluntarily terminates the course of training in such educational institution before the completion of such course of training,

"(4) fails to become licensed to practice medicine, osteopathy, dentistry, podiatry, or optometry in a State, fails to become registered as a graduate nurse in a State, or fails to meet any applicable licensure requirement in the case of any other health-care personnel who provide either direct patient-care services or services incident to direct patient-care services, during a period of time determined under regulations prescribed by the Administrator, or

"(5) in the case of a participant who is a part-time student, fails to maintain employment, while enrolled in the course of training being pursued by such participant, as a Veterans' Administration employee permanently assigned to a Veterans' Administration health-care facility,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to or on behalf of the participant under the contract.

"(c) If a participant in the Scholarship Program breaches the written contract by failing (for any reason) to complete such participant's period of obligated service, the United States shall be entitled to recover from the participant an amount determined in accordance with the following formula:

$$A = 3\Phi \left(\frac{t-s}{t} \right)$$

in which 'A' is the amount the United States is entitled to recover; 'Φ' is the sum of the amounts paid under this subchapter or on behalf of the participant and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; 't' is the total number of months in the participant's period of obligated service, including any additional period of obligated service in accordance with section 4313(b)(4)(B) of this title; and 's' is the number of months of such period served by the participant in accordance with section 4313 of this title. Any amount of damages which the United States is entitled to recover under this section will, within the one-year period beginning on the date of the breach of the written contract, be paid to the United States.

"SUBCHAPTER III—VETERANS' ADMINISTRATION HEALTH PROFESSIONAL TUITION REIMBURSEMENT PROGRAM

"§ 4321. Eligibility; application; written contract

"(a) To be eligible to participate in the Tuition Reimbursement Program, an individual, in addition to meeting the requirements specified in section 4302 of this title, must—

"(1) be a full-time Veterans' Administration Nursing Service employee permanently assigned to a Veterans' Administration health-care facility and be enrolled in a course of training offered by an institution approved by the Administrator leading toward completion of (A) an associate or higher degree in nursing or (B) a masters or doctoral degree in a field related to nursing; or

"(2) if the Administrator determines that it is necessary to assist in providing for the Veterans' Administration an adequate supply of personnel in any other health profession, be a full-time Veterans' Administration employee in such profession providing either direct patient-care services incident to direct patient-care services who is permanently assigned to a Veterans' Administration health-care facility and be enrolled in a course of training offered by such an institution, and approved by the Administrator, leading toward completion of a masters or doctoral degree in an appropriate field.

"(b)(1) In selecting applicants described in paragraph (1) of subsection (a) of this section for acceptance in the Tuition Reimbursement Program, the Administrator, in addition to according priorities as set forth in section 4302(c) of this title, shall give priority, in the following order, to the applications of (A) individuals who have been employed as a full-time Veterans' Administration Nursing Service employee for at least 2 years and have demonstrated superior proficiency and performance, as determined by the Chief Nurse of the facility at which the individual is employed, in consultation with the local career development committee, (B) individuals who have been employed as a full-time Veterans' Administration Nursing Service employee for at least 2 years, and (C) individuals who have previously received tuition reimbursement under the Tuition Reimbursement Program.

"(2) In selecting employees described in paragraph (2) of subsection (c) of this section for acceptance in the Tuition Reimbursement Program, the Administrator, in addition to according priorities as set forth in section 4302(c) of this title, shall give priority, in the following order, to the applications of (A) individuals who have been employed as a full-time Veterans' Administration employee in the health profession concerned for at least 2 years and have demonstrated superior proficiency and performance, as determined by the appropriate supervisory employee in the same health profession at the facility at which the individual is employed, in consultation with the local career development committee, (B) individuals who have been employed as a full-time Veterans' Administration employee in the health profession concerned for at least 2 years, and (C) individuals who have previously received tuition reimbursement under the Tuition Reimbursement Program.

"(c) Before approving tuition reimbursement assistance in any course of training other than nursing, the Administrator, not less than 60 days before awarding such assistance, shall notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the Administrator's intent to award assistance in such course of training and of the reasons why the award of such assistance in such course of training is necessary to assist in providing for the Veterans' Administration an adequate supply of personnel in the health profession concerned.

"(d) The written contract referred to in section 4302(a)(3) of this title between the Administrator and participant in the Tuition Reimbursement Program, in addition to the requirements set forth in such section, shall contain—

"(1) the Administrator's agreement, subject to section 4302(e)(2) of this title, to provide the participant with tuition reimbursement following successful completion (as determined, pursuant to regulations prescribed by the Administrator, by the educational institution involved) of (i) a course or courses required for the course of study described in subsection (a)(1)(B) of this section, or (ii) a course or courses taken as necessary prerequisites for degree program enrollment if a letter regarding the potential enrollment of the participant from an appropriate official of the institution involved includes a statement specifying such prerequisites; and

"(2) subject to section 4302(e)(2) of this title, the participant agrees—

"(A) to maintain employment while enrolled in the course of training being pursued by such participant, as a full-time Veterans' Administration employee permanently assigned to a Veterans' Administration health-care facility; and

"(B) to continue to serve as a full-time employee in the Department of Medicine and Surgery for one year (hereinafter in this subchapter referred to as the 'period of obligated service') after completion of the course for which the participant received tuition reimbursement.

"(e) Tuition reimbursement provided to a participant in the Tuition Reimbursement Program shall not exceed $2,000 per year (adjusted in accordance with section 4302(f) of this title).

"(f) The Administrator may contract with an educational institution pursuant to which such an institution would provide a course or courses at a Veterans' Administration health-care facility to participants in the Tuition Reimbursement Program. Pursuant to the contract, the Administrator may agree to pay to the institution an amount not in excess of an amount determined by multiplying the number of participants in such a course by the amount of tuition reimbursement each participant would receive for enrolling and successfully completing such course.

"§ 4322. Obligated service

"(a) Each participant in the Tuition Reimbursement Program shall provide service in the full-time clinical practice of such participant's profession as a full-time employee of the Veterans' Administration for the period of obligated service provided in the contract of such participant entered under section 4302(a)(3) of this title.

"(b) A participant who on such participant's course completion date is a full-time employee in the Department of Medicine and Surgery shall be considered to have begun serving such participant's period of obligated service on the course completion date.

"(c) Except in the case of a participant whose tuition was paid pursuant to section 4321(f) of this title, if a participant in the Tuition Reimbursement Program fails to successfully complete a course, no reimbursement will be provided and no period of obligated service will be incurred.

"(d) In the case of a participant whose tuition was paid pursuant to section 4321(f) of this title and who fails to complete the course involved, the period of obligation shall be of the same duration as it would have been if the participant had successfully completed the course and the course completion date shall be considered to be the date on which the participant's failure becomes an established fact.

"(e) For the purposes of this subsection, the term 'course completion date' means the date on which a participant in the Tuition Reimbursement Program completes such participant's course of training under the program.

"§ 4323. Breach of contract; liability

"(a) A participant in the Tuition Reimbursement Program who fails to maintain employment as a Veterans' Administration employee permanently assigned to a Veterans' Administration health-care facility—

"(1) shall not receive reimbursement for tuition for the course or courses in which the participant is enrolled; and

"(2) in lieu of any service obligation arising from completion of a course or courses in a previous semester or quarter, shall be liable to the United States for the amount which has been paid to or on behalf of the participant under the contract.

"(b) If a participant in the Tuition Reimbursement Program breaches the written contract by failing (for any reason) to complete such participant's period of obligated service, the United States shall be entitled to recover from the participant an amount determined in accordance with the following formula:

$$A=3\Phi\left(\frac{t-s}{t}\right)$$

in which 'A' is the amount the United States is entitled to recover; 'Φ' is the sum of the amount paid under this subchapter or on behalf of the participant and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; 't' is the total number of months in the participant's period of obligated service; and 's' is the number of months of such period served by the participant in accordance with section 4322 of this title. Any amount of damages which the United States is entitled to recover under this section will, within the one-year period beginning on the date of the breach of the written contract, be paid to the United States.

"§ 4324. Allocation and distribution of funding

"In determining the amount of funding to allocate to Veterans' Administration health-care facilities in connection with the Tuition Reimbursement Program, the Administrator shall take into account (1) the personnel ceiling for nursing personnel, and (2) the recruitment and retention needs of that facility, as determined by the Administrator.".

(c) The provision of subchapter IV of chapter 73 as in effect on the date of enactment of this Act shall be deemed to remain in effect with respect to scholarships awarded under such subchapter.

SEC. 327. RECRUITMENT AND RETENTION BONUS PAY.

(a) In General.—Subchapter I of chapter 73 is amended—

(1) in section 4107(d), by striking out "section 4118" and inserting in lieu thereof "sections 4118 and 4120"; and

(2) by inserting after section 4119 the following new section:

"§ 4120. Recruitment and retention bonus pay for certain health-care personnel

"(a) Notwithstanding any other provision of law, in order to recruit and retain the services of personnel in a category described in clause (A) or (B) of section 4107(g)(1) of this title when the Administrator determines upon the recommendation of the Chief Medical Director, that there is a critical shortage of such personnel in the Department of Medicine and Surgery, the Administrator may pay a bonus to any such personnel as provided in this section and in regulations prescribed by the Administrator under subsection (i) of this section.

"(b) The bonus which may be paid under this section may not exceed $20,000, and may be paid only to an individual who executes a written agreement with the Administrator—

"(1) to be or to continue to be employed on a full-time basis in the Department of Medicine and Surgery for a specified period of service not less than 4 years; and

"(2) to serve during that period in a specific geographic location or a professional capacity with respect to which the Administrator has determined under subsection (f) of this section there are significant recruitment and retention problems.

"(c) A bonus may not be paid under this section (1) to any individual who is obligated to serve in the Veterans' Administration for a period of employment until such time as such individual completes such period of employment in accordance with any terms or conditions which such individual was obligated to satisfy, and (2) unless all personnel serving in the same professional capacity in the recruitment area for that category of employment are offered the opportunity to receive such a bonus under the same terms and conditions.

"(d)(1) Except as provided in paragraph (2) of this subsection, a bonus under this section shall be paid in equal installments after each year of service is completed throughout the period of obligated service specified in the agreement described in subsection (b) of this section.

"(2)(A) The Administrator may make a payment in an amount not in excess of 25 percent of the total bonus in a lump sum at the time that the period of obligated service commence under an agreement described in subsection (b) of this section.

"(B) In the event that the Administrator makes a payment under subparagraph (A) of this paragraph, the remaining balance of the bonus shall be paid in equal installments after each year of service is completed throughout the period of obligated service specified in the agreement described in subsection (b) of this section.

"(e)(1) A bonus paid to any individual under this section shall be in addition to any pay or allowance to which such individual is entitled.

"(2) The amount of any bonus paid under this section shall not be considered as basic pay for the purposes of sections 551, 552, and 5595 of title 5, chapters 81, 83, 84, and 87 of such title, or any other provision of law creating an entitlement to benefits based on basic pay.

"(f) At least once each year the Administrator, upon the recommendation of the Chief Medical Director, shall determine the specific geographic locations and professional specialties, if any, as to which there are significant recruitment and retention problems in the personnel categories described in subsection (a) of this section. Upon making any such determination, the Administrator shall promptly notify the Committee on Veterans' Affairs of the Senate and the House of Representatives of the determination and the basis therefor.

"(g)(1) Any individual who receives a lump-sum bonus payment under subsection (d)(2) of this section and who voluntarily, or because of misconduct, fails to perform services as assigned by the Administrator for the first year of the period of obligated service provided in the agreement shall refund to the United States Treasury the amount of such lump-sum bonus payment, unless the Administrator determines, in accordance with regulations prescribed under subsection (i) of this section, that such failure is necessitated by circumstances beyond the control of such individual.

"(2) An obligation to refund any portion of a bonus payment under this subsection is, for all purposes, a debt owed to the United States.

"(h) The Administrator shall prescribe regulations to carry out this section.

"(i) For the purposes of this section, the term 'recruitment area' means, with respect to persons in a health-care profession, a geographic area in which a health-care facility located in such area generally competes with all other health-care facilities located in such area in the recruitment of employees in that profession.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 4119 the following:

"4120. Recruitment and retention bonus pay for certain health-care personnel.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 1987.

SEC. 328. ON-CALL PAY.

Section 4107 is amended by adding at the end the following new subsection:

"(j)(1) Notwithstanding any other provision of law, an individual—

"(A) who (i) is employed in a position listed in paragraph (3) of section 4104 of this title, or (ii) meets the criteria specified in subclauses (i), (ii), and (iii) of subsection (g)(1)(B) of this section, and

"(B) who is employed in a work unit for which on-call premium pay is authorized, and

"(C) who is officially scheduled to be on call outside such individual's regular hours or on a holiday designated by Federal statute or Executive order,

may be paid at the rate provided in subsection (e)(8) of this section except for such time as such individual may be called back to work.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection with respect to the rate of on-call premium pay, an individual who is scheduled to be on call pursuant to such paragraph and who was receiving standby premium pay pursuant to section 5545 of title 5 on the date of the enactment of this subsection, shall, as long as such employee is employed in the same position and work unit and remains eligible for such standby pay, receive pay equal to the greater of (A) the amount of pay which such employee would receive if being paid the rate of standby pay pursuant to such section that such individual would be entitled to receive if such individual were not scheduled to be on call instead, or (B) the amount of pay which such employee is entitled to receive including on-call premium pay described in such paragraph.".

SEC. 329. NURSE REPRESENTATION.

Section 4112 is amended by adding at the end the following new subsection:

"(c) The Administrator shall require that the Chief, Nursing Service, or the designee of the Chief, at each Veterans' Administration health-care facility be included in the membership of each policymaking and fiscal committee at each such facility, including, but not limited to (1) committees relating to (A) budget, (B) education, (C) position management, (D) clinical executive issues, (E) planning, and (F) resource allocation, and (2) the deans committee or other advisory committee established pursuant to subsection (b) of this section.".

SEC. 330. AUTHORITY TO WAIVE LICENSURE AND INTERNSHIP REQUIREMENTS FOR CERTAIN HEALTH-CARE PERSONNEL.

Subsection (d) of section 4114 is amended to read as follows:

"(d)(1) Subject to paragraph (2) of this subsection, the Chief Medical Director may waive for the purpose of the appointment of an individual under this section the requirements set forth in section 4105(a) of this title—

"(A) that a physician, dentist, psychologist, optometrist, registered nurse, practical or vocational nurse, or physical therapist be licensed or certified, as appropriate;

"(B) that the licensure or certification of such an individual be in a State; and

"(C) that a psychologist have completed an internship.

"(2) The waivers authorized in paragraph (1) of this subsection may be granted—

"(A) in the case of clauses (A) and (C) of such paragraph, if the individual will (i) be employed to conduct research or serve in an academic position, and (ii) have no responsibility for furnishing direct patient care services; and

"(B) in the case of clause (B) of such paragraph, if the individual will be employed to serve in a country other than the United States and the individual's licensure or registration is in the country in which the individual is to serve.".

SEC. 331. RATES OF PAY FOR CERTAIN PSYCHOLOGISTS.

Notwithstanding any other provision of law, the Administrator of Veterans' Affairs, not later than 90 days after the date of the enactment of this Act, shall utilize the authority set forth in section 4107(g) of title 38, United States Code, to increase the rates of pay of clinical or counseling psychologists who hold diplomas as diplomates in psychology from an accrediting authority approved by the Administrator unless the Chief Medical Director of the Veterans' Administration determines that such psychologists are not needed to furnish appropriate quality of psychological services for veterans. The amount by which such rate of pay shall be increased shall be the amount determined by the Administrator, upon recommendation of the Chief Medical Director, to be necessary to make the pay for such psychologists competitive with the pay of psychologists with the same qualifications and credentials serving in non-Veterans' Administration capacities.

SEC. 332. STUDY OF PAY AND OTHER PERSONNEL MANAGEMENT PRACTICES.

(a) IN GENERAL.—The Administrator of Veterans' Affairs shall conduct a study in order to determine (1) the effects of the pay and other personnel management practices of the Department of Medicine and Surgery of the Veterans' Administration on the ability of the Veterans' Administration to recruit and retain categories of employees (A) who are qualified to provide direct patient-care services, or services that are incidental to direct patient-care services, in Veterans' Administration health-care facilities, and (B) as to which problems of recruitment and retention have arisen, and (2) the effects that flexible employment benefits programs would have on the recruitment and retention of such employees.

(b) MATTERS REQUIRED TO BE STUDIED.—The Administrator, in conducting the study under subsection (a), shall determine the following:

(1) Whether there is inappropriate pay compression between the rates of pay of long-time employees of the Veterans' Administration and either the rates of pay of their supervisors or the rates of pay of relatively new employees performing the same services as a result of the position classification and pay systems applicable to such long-time and relatively new employees or to their supervisors.

(2) If any such inappropriate pay compression exists and such compression results from such position classification and pay systems, whether it is feasible to revise such system or systems in order to eliminate it and how much would be the cost to revise such system or systems for that purpose and to implement the revisions.

(3) Whether the payment of pay differentials (or of increased pay differentials) for evening or night service is needed in order to improve the ability of the Veterans' Administration to recruit and retain personnel to perform services referred to in subsection (a) on evening or night shifts, in what amounts such differentials should be paid, how much would be the cost of the payment of such differentials, and what, if any, effects the payment of such differentials would be expected to have on the ability of the Veterans' Administration to recruit and retain personnel to perform such services on a shift for which a differential is not paid.

(4) Whether it is feasible and desirable for recruitment and retention purposes for the Veterans' Administration to provide, without significant diminution of the health-care services furnished by the Veterans' Administration to veterans, each of the following benefits, in return for a fee not exceeding the amount of the cost incurred by the Veterans' Administration in providing such benefit, to each category of employees referred to in subsection (a) and how much would be the gross and net costs of providing such benefits:

(A) Diagnostic tests ordered by a physician who is not employed by the Veterans' Administration.

(B) Medications prescribed by any such physician.

(C) Laboratory services ordered by any such physician.

(D) Radiology services ordered by any such physician.

(5) Whether it is feasible and desirable for recruitment and retention purposes for the Veterans' Administration to provide opportunities for registered nurses who have received advanced degrees to carry out research in clinical, administrative, or educational areas.

(6) Whether it is feasible and desirable to establish programs which foster interdisciplinary professional collaboration and collegial relationships between

physicians and registered nurses, and what effects such programs would have on the ability of the Veterans' Administration to recruit and retain registered nurses.

(c) CONSIDERATION OF FLEXIBLE EMPLOYEE BENEFITS PROGRAMS.—The Administrator of Veterans' Affairs, in conducting the study under subsection (a), shall review the personnel management practices of an appropriate sample of employers other than the Federal Government. The Administrator shall consider the extent to which such employers provide flexible employment benefits under programs designed to meet the individual needs to their employees, the advantages of such programs for such employers and employees, and the feasibility, desirability, and appropriateness of establishing and carrying out any such flexible employment benefits program for employees of the Department of Medicine and Surgery of the Veterans' Administration.

(d) REPORT.—Not later than the one year after the date of the enactment of this Act, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the results of the study required by subsection (a). The report shall contain—

(A) the determinations of the Administrator; and

(B) any plan administrative actions, and any recommendations for legislation, that the Administrator considers appropriate to include in the report on the basis of the results of such study.

SEC. 333. DRUG TESTING OF VETERANS' ADMINISTRATION EMPLOYEES.

The Administrator of Veterans' Affairs shall not conduct any program of testing of Veterans' Administration employees for the use of illegal drugs as defined in section 7(c) of Executive Order 12564 as in effect on July 31, 1987, except (1) in the circumstances described in section 3(c) of such order as so in effect, and (2) that the term "accident or unsafe practice" in such section 3(c) means, in relation to the furnishing of health-care services, an unsafe practice which has resulted or could reasonably be expected to result in an adverse patient outcome.

Subpart 2—Other Medical Administration Matters

SEC. 341 REPEAL OF AUTHORITY TO FURNISH TOBACCO TO HOSPITALIZED VETERANS.

Section 615 is repealed.

SEC. 342. HOSPITAL COST COLLECTIONS.

Paragraph (2) of section 629(b) is amended by adding at the end the following new subparagraph:

"(C) A legal proceeding under subparagraph (B) of this paragraph with respect to care or services furnished to any veteran under this chapter may not be sustained if such proceeding is instituted more than 6 years after the last day on which such care or services are furnished to such veteran.".

SEC. 343. TORT CLAIMS.

(a) INAPPLICABILITY OF AN EXCEPTION RELATING TO FEDERAL TORT CLAIMS IN MEDICAL MALPRACTICE AND NEGLIGENCE CASES.—Section 4116 is amended by adding at the end the following new subsection:

"(f) The exception provided in section 2680(h) of title 28 shall not apply to any claim arising out of a negligent or wrongful act or omission of any person described in subsection (a) of this section in furnishing medical care or treatment (including medical care or treatment furnished in the course of a clinical study or investigation) while in the exercise of such person's duties in or for the Department of Medicine and Surgery.".

(b) INCREASED AUTHORITY TO ADJUST TORT CLAIMS ADMINISTRATIVELY.—(1) Subchapter II of chapter 3 is amended by adding at the end the following new section:

"§ 223. Administrative award of tort claims

"Notwithstanding the limitation contained in the proviso in the first paragraph of section 2672 of title 28, the maximum amount of an award, compromise, or settlement that the Attorney General may authorize the Administrator to make under such section in the case of any claim for money damages under section 1346(b) of title 28 or chapter 171 of such title shall be equal to the maximum amount of an award, compromise, or settlement which the Attorney General authorizes a United States attorney to make in the case of any such claim.".

(2) The table of sections at the beginning of chapter 3 is amended by inserting after the item relating to section 222 the following:

"223. Administrative award of tort claims.".

SEC. 344. ANNUAL VETERANS' ADMINISTRATION MEDICAL FACILITY CONSTRUCTION AUTHORIZATION.

Section 5004 is amended—

(1) in subsection (a)—

(A) by amending paragraph (2) to read as follows:

"(2)(A) It shall not be in order in the Senate or in the House of Representatives to consider a bill, resolution, or amendment which would make an appropriation for any fiscal year which may be expended for a major medical facility project unless (i) such bill, resolution, or amendment specifies the amount to be appropriated for such project, and (ii) the amount to be appropriated for such project is no more than the amount authorized, by a provision of law enacted in legislation which had been reported from the committees, to be appropriated for such project for that fiscal year.

"(B) It shall not be in order in the Senate or in the House of Representatives to consider a bill, resolution, or amendment which would make an appropriation which may be expended for a major medical facility lease unless such appropriation for such lease is authorized by a provision of law enacted in legislation which had been reported from the committees.";

(B) by striking out paragraphs (3) and (4) and inserting in lieu thereof the following:

"(3) For the purpose of this subsection—

"(A) the term 'major medical facility project' means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than $2,000,000, but such term does not include an acquisition by exchange; and

"(B) the term 'major medical facility lease' means a lease for space for use as a medical facility at an average annual rental of more than $500,000.";

(2) by amending subsection (c) to read as follows:

"(c) The amount obligated for any construction project, alteration project, or acquisition project that is authorized by a law described in subsection (a)(2)(A) of this section shall not exceed by more than 10 percent the amount authorized for such construction, alteration, or acquisition project in such law unless the Administrator, not less than 30 days before obligating any amount that would cause the amount so authorized for the project to be exceeded by more than 10 percent, provides the committees with notice of the Administrator's intention to do so and the reasons for doing so.";

(3) by striking out subsection (d); and

(4) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

SEC. 345. STANDARDIZATION OF MEDICAL AND PHARMACEUTICAL ITEMS.

Not later than the beginning of the third fiscal year beginning after the date of the enactment of this Act, the Administrator of Veterans' Affairs shall develop and fully implement an agency-wide plan for the cost-effective standardization, in a manner consistent with the effective furnishing of health-care services, of medical and pharmaceutical items procured by the Veterans' Administration. The plan shall provide for the procurement of generic pharmaceutical items where such procurement is more cost-effective than procurement of a name-brand pharmaceutical item except where the Chief Medical Director of the Veterans' Administration (1) determines, after consultation with the Food and Drug Administration, that an equivalent generic item is not available, or (2) determines that the availability of a name-brand item is necessary in the interests of effective patient care.

SEC. 346. REQUIREMENTS FOR THE PROCUREMENT OF MEDICAL AND PHARMACEUTICAL ITEMS.

(a) In General.—Subchapter II of chapter 81 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 5025. Procurement of medical and pharmaceutical items

"(a) Except as provided in subsection (b) and (c) of this section, the Administrator shall procure medical and pharmaceutical items only under national contracts.

"(b)(1)(A) Except as provided in subparagraph (B) of this paragraph, a medical or pharmaceutical item for use by the Veterans' Administration may be procured under a local contract instead of a national contract awarded by the Veterans' Administration only if—

"(i) the procurement is within the limits prescribed in paragraph (2) of this subsection, and

"(ii)(I) the item is not available for procurement under a national contract, or

"(II) procurement of the item by a local contract is necessary for the effective furnishing of health-care services or the conducting of a research or education program at a Veterans' Administration medical center, as determined by the director of the center in accordance with regulations which the Chief Medical Director shall prescribe.

"(B)(i) Subparagraph (A) of this paragraph shall not apply to an emergency procurement.

"(ii) In the case of the need for an emergency procurement of a medical or pharmaceutical item, no greater quantity of such item may be procured by a local contract than is reasonably necessary to meet the emergency need and the reasonably foreseeable need for the item at the medical center concerned until resupply can be achieved through procurement actions other than emergency procurement.

"(2)(A)(i) Except as provided in division (iii) of this subparagraph and in subparagraph (B) of this paragraph, not more than 20 percent of the total of all medical and pharmaceutical items procured by the Veterans' Administration in any fiscal year (measured as a percent of the total cost of all such medical and pharmaceutical items procured by the Veterans' Administration in that fiscal year) may be procured under local contracts.

"(ii) Local contracts for the procurement of medical or pharmaceutical items shall, to the maximum extent feasible, be awarded to regular dealers or manufacturers engaged in the wholesale supply of medical and pharmaceutical items.

"(iii) The President may increase for a fiscal year the percentage specified in subparagraph (A) of this section to a percentage not greater than 30 percent if the President, based on the experience of the Veterans' Administration during the 2 fiscal years preceding such fiscal year, determines that the increase and the amount of the increase are necessary in the interest of the effective furnishing of health-care services by the Veterans' Administration. The authority to increase such percentage may be delegated only to the Director of the Office of Management and Budget and may not be redelegated.

"(B) Items procured through an emergency procurement shall not be counted for the purpose of this paragraph.

"(c) Any provision of law that is inconsistent with subsection (a) or (b) of this section shall not apply, to the extent of the inconsistency, to the procurement of a medical or pharmaceutical item for use by the Veterans' Administration.

"(d)(1) Not later than December 1 of each fiscal year (beginning on December 1, 1988), the director of each Veterans' Administration medical center shall transmit to the Administrator a report containing a list indicating the quantity, and the cost therefor, of each medical and pharmaceutical item procured at that medical center under a local contract during the preceding fiscal year.

"(2) Not later than February 1 of each year (beginning on February 1, 1989), the Administrator shall submit to the Committee on Veterans' Affairs of the Senate and the House of Representatives a report on the experience in carrying out the provisions of this section during the most recent fiscal year.

"(e) For the purposes of this section.

"(1) The term 'emergency procurement' means a procurement necessary to meet an emergency need, affecting the health or safety of a veteran being furnished health-care services by the Veterans' Administration, for a medical or pharmaceutical item.

"(2) The terms 'medical or pharmaceutical item' and 'medical and pharmaceutical items' include any item (in the case of the former term) or items (in the case of the latter term) listed in, or (as determined by the Administrator) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 65, 66, 73, or 89 in the document published by the Veterans' Administration, dated April 1986, and entitled 'Federal Supply Catalog, Centrally Managed Items,' or the document published by the Veterans' Administration, dated October 1985, and entitled 'Federal Supply Catalog, Nondepot Items,' but does not include any surgical instruments.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 5024 the following new item:

"5025. Procurement of medical and pharmaceutical items.".

(c) APPLICATION.—Subsection (b)(2) of section 5025 of title 38, United States Code (as added by subsection (a)), shall apply to medical and pharmaceutical items procured for use by the Veterans' Administration on or after October 1, 1990.

SEC. 347. MULTIYEAR MEDICAL PROCUREMENTS.

(a) Section 213 is amended—

(1) by inserting "(a)" before "The" in the first sentence; and

(2) by adding at the end the following new subsection:

"(b)(1) The Administrator may enter into a multiyear contract if the Administrator determines that—

"(A) appropriations are available and adequate for obligations that are necessary for—

"(i) total payments that would be required during the full term of the contract; or

"(ii) total payments that would be required during the fiscal year in which the contract is entered into, plus the estimated amount of any cancellation charges payable under the contract; and

"(B) the contract is in the best interest of the United States by reason of the effect that use of a multiyear, rather than one-year, contract would have in—

"(i) reducing costs;

"(ii) achieving economies in contract administration or in any other Veterans' Administration activities;

"(iii) increasing quality of performance by or service from the contractors; or

"(iv) encouraging effective competition;

"(C) during the proposed contract period—

"(i) there will be a continuing or recurring need for the supplies or services being procured;

"(ii) there is not a substantial likelihood of substantial changes in the need for such supplies or services in terms of the total quantity of such supplies or services or of the rate of delivery of such supplies or services; andm

"(iii) the specifications for the supplies or services are expected to be reasonably stable;

"(D) the risks relating to the prospective contractor's ability to perform in accordance with the specifications and other terms of the contract are not excessive;

"(E) the use of a multiyear contract will not inhibit small business concerns in competing for the contract; and

"(F) in the case of the procurement of a pharmaceutical item for which a patent has expired less than 4 years before the date on which the solicitation of offers is issued, there is no substantial likelihood that increased competition among potential contractors would occur during the term of the contract as the result of the availability of generic equivalents increasing during the term of contract.

"(2)(A) A multiyear contract authorized by this subsection shall contain—

"(i) a provision that the United States' obligation under the contract during any fiscal year which is included in the contract period and is subsequent to the fiscal year in which the contract is entered into is contingent on the availability of sufficient appropriations (as determined by the Administrator pursuant to subparagraph (B)(i) of this paragraph) if, at the time the contract is entered into, appropriations are not available to cover the total estimated payments that will be required during the full term of the contract; and

"(ii) notwithstanding section 1502(a) of title 31, a provision for the payment of reasonable cancellation charges to compensate the contractor for nonrecurring, unrecovered costs, if any, if the performance is cancelled pursuant to the provision required by clause (i) of this subparagraph.

"(B)(i) If, during a fiscal year subsequent to the fiscal year in which a multiyear contract is entered into, the Administrator determines that, in light of other funding needs involved in the operation of Veterans' Administration health-care programs, the amount of funds appropriated for such subsequent fiscal year is not sufficient for such contract, the Administrator shall promptly cancel such contract pursuant to the provisions required by subparagraph (A)(i) of this paragraph.

"(ii) Cancellation charges under a multiyear contract shall be paid from the appropriated funds which were originally available for performance of the contract or the payment of cancellation costs unless such funds are not available in an amount sufficient to pay the entire amount of the cancellation charges payable under the contract. In a case in which such funds are not available in such amount, funds appropriated for a subsequent fiscal year or years for the procurement of supplies and services for use for the same purposes as the supplies or services procured through such contract shall be used to the extent necessary to pay such cost.

"(3) Nothing in this subsection shall be construed so as to supersede any other provision of law which authorizes multiyear contracts or to eliminate or restrict the

Administrator's exercise of the right to terminate for convenience such a multiyear contract.

"(4) The Administrator shall prescribe regulations implementing this subsection.

"(5) For the purposes of this subsection:

"(A) The term 'appropriations' has the meaning provided such term in section 1511 of title 31.

"(B) The term 'cancel' or 'cancellation' refers to the termination of a contract by the Administrator as required under paragraph (2)(B)(i) of this subsection.

"(C) The term 'multiyear contract' means a contract which (i) is for the procurement of supplies or services for use in a Veterans' Administration health-care facility, and (ii) by its terms is to remain in effect for a period which extends beyond the end of the fiscal year in which such contract is entered into but not beyond the end of the fourth fiscal year following such fiscal year. Such term does not include a contract for construction or for a lease of real property.

"(D) The term 'nonrecurring, unrecovered costs' means those costs reasonably incurred by the contractor in performing a multiyear contract which (as determined under regulations prescribed under paragraph (5) of this subsection) are generally incurred on a one-time basis and include, but are not limited to, such costs as plant or equipment relocation, plant rearrangement, special tooling, special test equipment, preproduction engineering, and specialized work force training."

TITLE IV—MISCELLANEOUS

SEC. 401. PROHIBITION AGAINST EXCESSING OF CERTAIN VETERANS' ADMINISTRATION PROPERTIES.

(a) Section 234 of Public Law 99-576 is repealed.

(b) The Administrator of Veterans' Affairs may not declare as excess to the needs of the Veterans' Administration, or otherwise take any action to dispose of, the land and improvements at the Veterans' Administration Medical Center, West Los Angeles, California (consisting of approximately 109 acres), and at the Veterans' Administration Medical Center, Sepulveda, California (consisting of approximately 46 acres), described in letters dated February 5, 1986 (and enclosed maps), from the Administrator to the Committees on Veterans' Affairs of the Senate and House of Representatives pursuant to section 5022(a)(2) of title 38, United States Code.

SEC. 402. NATIONAL CEMETERY GRAVE MARKERS.

(a) Section 1004(c)(2) is amended—

(1) by striking out "and" at the end of clause (A);

(2) by striking out the period at the end and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following new clauses:

"(C) in the case of any cemetery located nearby a Veterans' Administration health-care facility, the Administrator may provide for flat grave markers if the Administrator determines, upon the recommendation of the Chief Medical Director, that the use of upright markers at such cemetery would have a detrimental effect on the health of veterans receiving care at such facility; and

"(D) in the case of the national cemetery in Riverside, California, and the proposed national cemetery approved by the Administrator, as of July 31, 1987, for Northern California, the Administrator shall provide for flat grave markers for interments occurring after the date of the enactment of this clause.".

SEC. 403. LEASE OF FORMER MEDICAL CENTER (MINOT, NORTH DAKOTA).

(a)(1) Notwithstanding any other provision of law, the Administrator of Veterans' Affairs shall, upon the satisfaction of the conditions specified in paragraph (2), lease to the Department of Labor for nominal consideration the 20.6 acres of land, in the City of Minot, North Dakota, on which the Department of the Air Force on July 31, 1987, was operating, under a no-cost lease from the Veterans' Administration, the John Moses Air Force Hospital and on which the Veterans' Administration Hospital, Minot, North Dakota, was formerly located.

(2) The conditions referred to in paragraph (1) are as follows:

(A) Sufficient funds are appropriated to the Department of Labor for fiscal year 1988 to establish a Job Corps Center in North Dakota.

(B) The property is selected by the Department to establish such a Job Corps Center.

(C) The Department agrees to use the property as a Job Corp Center for the duration of the lease.

(b) The lease to the Labor Department under subsection (a) shall be renewed for nominal consideration for successive 10-year periods upon request of the Secretary of Labor.

SEC. 404. NATIVE HAWAIIAN REPRESENTATION ON THE ADVISORY COMMITTEE ON NATIVE-AMERICAN VETERANS.

Section 19032 of the Veterans' Health-Care Amendments of 1986 (Public Law 99-272; 100 Stat. 388) is amended—

(1) in subsection (b), by striking out "and Alaska Natives" and inserting in lieu thereof ", Alaska Natives, and Native Hawaiians";

(2) in subsection (c)(3)(A), by striking out "and Alaska Natives" and inserting in lieu thereof ", Alaska Natives, and Native Hawaiians,";

(3) in subsection (f)(1), by striking out "and February 1, 1988" and inserting in lieu thereof "February 1, 1988, and February 1, 1989";

(4) by striking out subsection (g) and inserting in lieu thereof the following:

"(g) DEFINITIONS.—For the purposes of this section—

"(1) the term 'Alaska Native' has the meaning given the term 'Native' in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)); and

"(2) the term 'Native Hawaiian' has the same meaning given that term in section 813(3) of the Native American Programs Acts of 1974 (42 U.S.C. 2992c(3))."; and

(5) in subsection (h), by striking out "second" and inserting in lieu thereof "third".

Amend the title so as to read:

To amend title 38, United States Code, to increase the rates of disability compensation and dependency and indemnity compensation for veterans and survivors, to improve housing, automobile, and burial benefits for service-disabled veterans, to provide for presumptions of service connection for certain disabilities of former prisoners of war, to provide disability and death benefits for certain veterans and their survivors based on exposure during service to ionizing radiation from a nuclear detonation, to improve Veterans' Administration health-care programs and their administration, and to provide authorities to help the Veterans' Administration overcome difficulties in recruiting and retaining health-care personnel and the disciplinary and grievance process for such personnel; and for other purposes.

INTRODUCTION

On January 6, 1987, S. 9 was introduced by the Chairman of the Committee, Senator Alan Cranston, and was co-sponsored by Committee Members Spark M. Matsunaga, Dennis DeConcini, George J. Mitchell, John D. Rockefeller, IV, and Bob Graham, and by Senator Frank R. Lautenberg. Joining later as a cosponsors were Senators Richard C. Shelby, Brock Adams, Dale Bumpers, and Paul Simon. As introduced, S. 9 would have, first, provided a cost-of-living adjustment (COLA) in the rates of disability compensation and dependency and indemnity compensation (DIC) equal to the FY 1988 Social Security COLA; second, provided COLA's in specially-adapted housing and automobile-assistance grants for certain service-disabled veterans and in funeral and burial benefits for service-connected deaths; third, provided for educational or rehabilitation assistance eligibility-period extensions for veterans who were prevented from pursuing training by a drug or alcohol abuse disability from which they have recovered; fourth, increased the maximum amount of the Veteran's Administration's home loan guaranty; and, fifth, extended and established certain exemptions from Gramm-Rudman-Hollings sequestration for certain veterans' benefits.

Also on January 6, 1987, S. 6 was introduced by Chairman Cranston and was cosponsored by Senators Matsunaga, DeConcini, Mitchell, Rockefeller, Graham, and Lautenberg. Joining later as cosponsors were Senators Jeff Bingaman, Thomas A. Daschle, and

John F. Kerry. S. 6 would, first, provide certain new categories of veterans and active-duty personnel with eligibility for readjustment counseling from the VA; second, postpone the transition period for the Vet Center program; third, authorize the establishment of a pilot program for the furnishing of noninstitutional care to certain veterans; fourth, increase the per diem rates paid to States for providing care to veterans in State Veterans' Homes; fifth, prohibit the excessing of certain VA properties; and, sixth, promote greater emphasis by affiliated health professional training institutions on geriatric training and research.

On January 6, 1987, S. 105 was introduced by Senator Daniel K. Inouye to provide for the payment of incentive special pay to DM&S psychologists in the VA's Department of Medicine and Surgery (DM&S) who obtain certain board certification in a professional specialty and agree to serve for a specified period of time in the DM&S.

On January 6, 1987, S. 216 was introduced by Senator Mitchell and was cosponsored by Chairman Cranston and Senator Matsunaga. Joining later as cosponsors were Senators David L. Boren and Don Nickles. S. 216 would increase the per diem rates paid to States for providing care to veterans in State Veterans' Homes.

On January 6, 1987, S. 240 was introduced by the Committee's Ranking Minority Member, Senator Frank H. Murkowski, to provide a COLA in the rates of disability compensation and DIC.

On February 4, 1987, S. 453 was introduced by Ranking Minority Member Murkowski and was cosponsored by Senators Pete B. Domenici, John W. Warner, and Alan J. Dixon. Joining later as cosponsors were Senators John Melcher, Claiborne Pell, Robert Dole, Barbara A. Mikulski, Larry Pressler, Richard G. Lugar, Ted Stevens, and Bumpers. S. 453 would, first, provide a presumption of service connection with respect to veterans exposed to ionizing radiation in connection with the detonation of a nuclear device in the United States nuclear weapons testing program or the American occupation of Hiroshima or Nagasaki, Japan, who subsequently develop certain cancers; and second, require that for purposes of adjudicating a claim the VA consider the exposure level reported by the Defense Nuclear Agency to be doubled.

On March 3, 1987, S. 631 was introduced Ranking Minority Member Murkowski and was cosponsored by Committee Members Robert T. Stafford and Alan K. Simpson. S. 631 would, first, require the Administrator to develop and fully implement an agencywide plan for the standardization of medical and pharmaceutical supplies purchased by the VA; second, generally require that VA medical centers purchase items through national contracts to be awarded by the VA; third, require that VA medical centers enter into procurement contracts with local wholesalers of medical and pharmaceutical supplies; and, fourth, require that VA medical centers report annually to the Administrator on certain aspects of their procurement activities.

On March 11, 1987, S. 713 was introduced by Ranking Minority Member Murkowski. Joining later as a cosponsor was Senator Robert Dole. S. 713 would authorize bonuses of up to $20,000 for certain full-time registered nurses who agree to serve for at least 3 years at a geographic location or in a professional specialty for which the Administrator had determined that there are significant recruitment and retention problems.

On April 1, 1987, S. 894 was introduced by Ranking Minority Member Murkowski to authorize the VA to furnish hospital care and medical services for the service-connected disabilities of veterans who are not United States citizens and are sojourning or residing outside the United States and the Philippines.

On April 3, 1987, S. 915 was introduced by Chairman Cranston at the request of the Administration to authorize the Chief Medical Director to waive State licensure or registration requirements for a registerd practical, or vocational nurse or physical therapist who is to be employed in academic or research work and not in patient care or who is to be employed in a foreign country in which he or she is licensed or registered.

On April 3, 1987, S. 917 was introduced by Chairman Cranston at the request of the Administration to, first, authorize a headstone allowance for pre-purchased grave markers; second, modify the eligibility requirements for the plot allowance; and third, allow flat grave markers to be used in a portion of the Wood Wisconsin National Cemetery.

On April 3, 1987, S. 918 was introduced by Chairman Cranston at the request of the Administration to, first, provide that two 50-minute periods of laboratory instruction, rather than two 60-minute periods of such instruction, be considered as the equivalent of one standard class session; second, give the Administrator the authority to waive the requirement of annual compliance surveys in the cases of educational institutions that offer one or more approved courses in which 300 or more veterans are enrolled or offer courses which do not lead to a standard college degree and authorize the Administrator to conduct compliance surveys whenever appropriate and in the best interests of the Government; third, require that the effective dates relating to awards under chapter 32 of title 38 (the Post-Vietnam Era Education Assistance Program (VEAP)) correspond, to the extent feasible with the effective dates of VA disability compensation; and, fourth, repeal the VA's authority to make education loans to veterans and eligible persons.

On April 7, 1987, S. 939 was introduced by Chairman Cranston at the request of the Administration to, first, authorize the VA to contract with non-VA health-care entities to provide emergency hospital care for a veteran who is being furnished nursing home care in the community under a VA contract and to provide inpatient observation and examiantion of a veteran to determine eligibility for a VA benefit; second, provide for the VA, when contracting for community nursing home care for eligible veterans in Alaska or Hawaii, to pay at a rate of up to 50 percent of the cost of care at a general community hospital in the State with which the VA contracts for care; third, authorize the VA to furnish necessary hospital care and medical services to any otherwise eligible veteran sojourning or residing abroad for a service-connected-disability or when services are needed to enable continued participation in a rehabilitation program under chapter 31 of title 38; and, fourth, repeal a requirement for an annual report on the provision of contract health care.

On April 7, 1987, S. 940 was introduced by Chairman Cranston at the request of the Administration to, first, provide for automatic annual COLAs in the rates of disability compensation and DIC based on increases in the Consumer Price Index; second, restrict VA benefits eligibility for or on behalf of the adopted children of veterans in the cases of adoptions under the laws of foreign countries; third, expand the current-law exclusion of fire-insurance proceeds from VA pension and parents' DIC income computations to encompass reimbursements for any casualty losses; fourth, to restore DIC beneficiaries receiving Social Security-equivalent VA benefits certain other Social Security-equivalent benefits which were eliminated in the Omnibus Budget Reconciliation Act of 1981 and not restored in 1982 when certain other equivalent Social Security benefits were restored by Public Law 97-377; fifth, authorize the collection of certain indebtedness to the VA or a uniformed service by means of an offset from benefits payable to the debtor by the other agency; and, sixth, authorize the VA to require the disclosure of the Social Security numbers of claimants and their dependents in claims for compensation, DIC, and pension benefits.

On Apri 9, 1987, S. 1002 was introduced by Chairman Cranston and was cosponsored by Senators Simon, Matsunaga, DeConcini, Mitchell, Rockefeller, Graham, and Claiborne Pell. Joining later as cosponsors were Senators Daschle, Harry Reid, James R. Sasser, Quentin N. Burdick, Dixon, David Pryor, Bingaman, Mikulski, Adams, Daniel P. Moynihan, Kerry, Donald W. Riegle, Melcher, and Timothy E. Wirth. S. 1002 would, first, provide disability benefits to veterans exposed to ionizing radiation in connection with the detonation of a nuclear device in the United States nuclear weapon testing program or the American occupation of Hiroshima or Nagasaki, Japan, suffering from certain specified cancers at either 100 percent or 50 percent of the rate of VA compensation benefits for the disability involved, depending on the strength of the association between the cancer and radiation and between the cancer and other risk factors; second, provide death benefits for the survivors of such veterans who died from such cancer; third, provide a formula for the upward recalculation of Defense Nuclear Agency radiation dose estimates; fourth, extend the entitlement to VA health care for ionizing radiation-exposed veterans from September 30, 1989, to September 30, 1990; and, fifth, require that the reports of the Veterans' Advisory Committee on Environmental Hazards be submitted to the Senate and House Veterans' Affairs Committees in addition to the Administrator of Veterans' Affairs.

On April 21, 1987, S. 1063 was introduced by Chairman Cranston at the request of the Administration to, first, make explicit that a malpractice claim against a VA physician can be brought only pursuant to the Federal Tort Calims Act; and, second, permit the increase of settlement authority by the Administrator with regard to certain tort claims against the VA.

On April 21, 1987, S. 1065 was introduced by Chairman Cranston at the request of the Administration to authorize the Administrator to provide on-call pay to certain VA health-care personnel appointed under the general civil service authority in title 5, United States Code.

On April 23, 1987, S. 1089 was introduced by Chairman Cranston at the request of the Administration to authorize the Administrator to make an award of a State Veterans' Home construction grant if it was determined that the State had submitted drawings and specifications for a project which were at least 80-percent complete and that the project would meet all remaining requirements within 6 months.

On April 23, 1987, S. 1090 was introduced by Chairman Cranston at the request of the Administration to, first, authorize the VA periodically to increase the dollar amount of monthly annuity benefits payable to beneficiaries under United States Government Life Insurance, National Service Life Insurance, Veterans Special Life Insurance, and Veterans Reopened Insurance programs when warranted by certain fund surpluses; second, exempt the premiums paid under Servicemen's Group Life Insurance and Veterans Group Life Insurance from State taxation; and, third, require the VA to assume all administrative functions under the Veterans Mortgage Life Insurance program.

On May 5, 1987, S. 1136 was introduced by Chairman Cranston at the request of the Administration to, first, limit to cases involving more serious proposed penalties the disciplinary actions in which disciplinary boards function; and, second, permit the Chief Medical Director to delegate the authority to appoint such boards and the chairperson and secretary of a board and to receive and act upon a board's recommendations.

On May 12, 1987, S. 1195 was introduced by Chairman Cranston and was cosponsored by Senators Murkowski, Matsunaga, DeConcini, Mitchell, and Rockefeller. Joining later as a cosponsor was Senator Simpson. S. 1195 would, first, make nurse additional-pay authorities available to assist in recruitment and retention of pharmacists and occupational therapists; second, require the VA to pay nurses premium pay for Saturday work; third, require that the Chief of Nursing Service be included in the membership of each policymaking and fiscal committee at each VA facility; fourth, establish a tuition reimbursement program for full-time nursing personnel or, when needed, for other full-time health-care personnel, for academic courses leading toward completion of any degree program in nursing or a field related to nursing, or in other appropriate degree granting fields for other personnel; fifth, make eligible for the Health Professional Scholarship Program physical therapists and other DM&S personnel who provide direct patient-care services or services incident to direct patient-care services; sixth, require a minimum of 2 years of obligated service for each year of scholarships to nurses seeking a fourth year of baccalaureate education.

On June 16, 1987, S. 1365 was introduced by Senator Graham and cosponsored by Chairman Cranston and Senators Murkowski, Matsunaga, DeConcini, Rockefeller, and Mitchell. Joining later as cosponsors were Senators Terry Sanford, Simpson, Howell T. Heflin, Ernest F. Hollings, Bill Bradley and Lautenberg. S. 1365 would establish presumptions of service-connection for former prisoners of war who are suffering from peripheral nueropathy, peptic ulcers, or irritable bowel syndrome, if manifested within 10 years after the veteran's last detention or internment and the symptoms have recurred on a continuous or regularly intermittent basis thereafter.

On July 14, 1987, S. 1491 was introduced by Senator DeConcini and was cosponsored by Chairman Cranston to include systemic lupus erythematosis among the chronic diseases that are presumed to be service connected when becoming manifest to the degree of 10-percent disabling within one year after a veteran's discharge from active service.

On July 17, 1987, S. 1506 was introduced by Ranking Minority Member Murkowski and was cosponsored by Chairman Cranston to authorize the Administrator to provide certain recreational activites for the rehabilitation of disabled veterans and to accept contributions in support of such activities and permit the donor to advertise its participation under certain circumstances.

On July 21, 1987, S. 1510 was introduced by Senator Kerry and cosponsored by Chairman Cranston. Joing later as cosponsors were Senators Joseph R. Biden, Jr., Rockefeller, Burdick, John Heinz, Simon, Arlen Specter, Albert Gore, and Pell. S. 1510 would require the Administrator of Veterans' Affairs to contract with the National Academy of Sciences (NAS)—or, if the NAS declined, with another appropriate private nonprofit scientific entity—for the review of scientific evidence, studies, and literature pertaining to the human health effects of exposure to Agent Orange and its component compounds and the production of a report by October 1, 1988, on the contractor's conclusions as to the weight of the evidence regarding the health effects in humans of exposure to Agent Orange.

On July 21, 1987, S. 1517 was introduced by Senator Mitchell and was cosponsored by Senator William S. Cohen to provide that VA per diem payments for the care of veterans in State Veterans' Homes shall not be used to offset payments that are made under the Medicaid Program for the purpose of assisting eligible veterans.

On April 30, 1987, the Committee held a hearing, chaired by Senator Rockefeller, to receive testimony on matters pertaining to certain veterans' educational and employment assistance legislation—amendment No. 160 to S. 999, none of the provisions of which are incorporated in S. 9 as reported, and S. 918. Testimony on S. 918 was received from Mr. R.J. Vogel, Chief Benefits Director of the VA, and representatives of The American Legion, the Veterans of Foreign Wars, the AMVETS, and the Paralyzed Veterans of America.

On May 21, 1987, the Committee held a hearing, chaired by Chairman Cranston and Senator DeConcini, to receive testimony on VA health-care related measures—S. 6, S. 105, S. 216, S. 631, S. 713, S. 894, S. 915, S. 939, S. 1062, S. 1063, S. 1065, S. 1089, S. 1125, S. 1136, and S. 1195. Testimony was received from Senator Inouye; Dr. John A. Gronvall, Chief Medical Director of the VA; Ms. E. Elaine Lloyd, President, Nurses Organization of the Veterans' Administration; Dr. Mary Naylor, Associate Dean, School of Nursing, University of Pennsylvania; Dr. Sheila McCarthy, Director of Nursing, George Washington University Medical Center, and President-elect of the American Organization of Nurse Executives; Mr. John Mulholland, Director, Field Services, American Federation of Government Employees; Ms. Tricia Thomas, National Federation of Federal Employees; Dr. Howard Green, Member, Executive Board, National Association of VA Chiefs of Staff; Dr. Gloria Hope, Executive Director, Washington Governmental Affairs Office, American Nurses Associations; Dr. Peter Hawley, President, National Association of VA Physicians; Mr. Jack Dack, Chairman, Legislative Committee, National Association of State Veterans' Homes (NASVH), and Mr. Carl Tuvin, NASVH Legislative Liaison; and representatives from the American Legion, the Disabled American Veterans, the Veterans of Foreign Wars, and the Paralyzed Veterans of America. Testimony was also submitted for the record of the hearing from the American Organization of Nurse Executives, American Association of Critical Care Nurses, American Psychological Association, American Physical Therapy Association, American Occupation Therapy Association, Inc., and American Optometric Association, and the General Services Administration.

On June 30, 1987, the Committee held a hearing, Chaired by Chairman Cranston, to receive testimony on VA compensation and other benefits-related legislation—S. 9, S. 453, S. 917, S. 919, S. 940, S. 1002, S. 1090, and S. 1365. Testimony was received from Senators Kerry, John McCain, and Pryor; VA Chief Benefits Director Vogel; and representatives of The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America, the Gold Star Wives of America, the National Association of Radiation Survivors, the National Association of Atomic Veterans, the International Association of Atomic Veterans, the AMVETS Trinity Post 7-45, the American Ex-Prisoners of War, and the Amerian Defenders of Bataan and Corregidor. Also submitting testimony at the hearing were Professor Kenneth L. Mossman and Dr. David Bradley, both of Georgetown University.

After carefully reviewing the testimony from these hearings, the Committee met in open session on July 31, 1987, and voted unanimously after various amendments failed subject to amendments to report S. 9 favorably to the Senate with an amendment in the nature of a substitute which incorporated provisions derived from virtually all of the bills the introduction of which is noted above, and a title amendment. On October 16, 1987, the Committee voted to delete from S. 9 as ordered reported and to report favorably to the Senate in a separate bill (ultimately S. 1801) provisions pertaining to the VA's home loan guaranty program which were contained in part C of title I of S. 9 as ordered reported.

Summary of S. 9 as Reported

S. 9 as reported (hereinafter referred to as the "Committee bill") has 4 titles: Compensation and Other Benefits; Radiation Exposure Benefits; Health Care; and Miscellaneous, as follows:

TITLE I—COMPENSATION AND OTHERS BENEFITS

This title would provide for cost-of-living adjustments in VA compensation and related benefits and make improvements in various benefits programs.

Part A—Compensation and Related Cost of Living Adjustments

Part A of this title contains freestanding provisions and amendments to chapters 21, 23, and 29 of title 38, United States Code, that would:

1. Require the Administrator of Veterans' Affairs to adjust, effective December 1, 1987, the rates and limitations for compensation paid to veterans with service-connected disabilities and dependency and indemnity compensation (DIC) paid to certain service-connected-disabled veterans' survivors by the same percentage (4.2 percent) as that paid to Social Security recipients and VA pension beneficiaries effective on that same date (section 101).

The basic adjustment would apply to:

(a) basic compensation rates for service-connected disabled veterans and the rates payable for certain severe disabilities;

(b) the allowances for spouses, children, and dependent parents paid to service-connected disabled veterans rated 30-percent or more disabled;

(c) the annual clothing allowance paid to veterans whose compensable disability requires the use of a prosthetic or orthopedic appliance (including a wheelchair) that tends to tear or wear out clothing; and

(d) the DIC rates paid to:

(i) surviving spouses of veterans whose deaths were service connected;

(ii) surviving spouses for dependent children and surviving spouses who are so disabled as to be in need of regular aid-and-attendance or to be permanently housebound; and

(iii) the children of veterans whose deaths were service connected where no surviving spouse is entitled to DIC, the child is 18 through 22 and attending an approved educational institution, or the child is age 18 or over and became permanently incapable of self-support prior to reaching age 18.

2. Increase by 12.7 percent, from $35,500 to $40,000, the maximum amount of specially adapted housing assistance for certain service-connected disabled veterans with serious mobility impairments and increase by 12.9 percent, for $6,000 to $6,775, the maximum amount payable for special housing adaptations for certain veterans suffering from service-connected total blindness or loss or loss of use of both upper extremities (section 102).

3. Increase by 11 percent, from $5,000 to $5,530, the maximum amount of the automobile assistance allowance for veterans with certain service-connected disabilities (section 103).

4. Increase by 105 percent, from $1,100 to $2,250, the burial allowance for a veteran who dies of service-connected causes (section 104).

Part B—Other Compensation-Related Provisions

Part B of this title contains freestanding provisions and amendments to chapters 1, 11, 13, 15, and 17 of title 38 that would:

1. (a) Add peripheral neuropathy, peptic ulcer disease, and irritable bowel syndrome to the list of diseases of former prisoners of war that are presumed to be service connected; and (b) reduce from

6 months of internment to 90 days the dental benefits eligibility requirement (section 111).

2. Add systemic lupus erythematosus to the list of chronic diseases that are presumed to be service connected if becoming manifest within one year after a veteran's discharge from active service (section 112).

3. Restore to DIC beneficiaries receiving certain Social Security-equivalent benefits the benefits—equal to the mother's benefit for children ages 16 and 17 and the child's benefit for post-secondary students and for secondary students over age 19—which were eliminated in the Omnibus Budget Reconciliation Act of 1981 and restored in 1982 to Social Security recipients but not to these DIC beneficiaries (section 113).

4. Provide a permanent exemption from Gramm-Rudman-Hollings sequestration for rehabilitation programs for service-connected disabled veterans under chapter 31 of title 38 and the program of educational assistance for survivors and dependents under chapter 35 (section 114).

5. Require the VA to contract for a comprehensive review—by the National Academy of Sciences (NAS), or, if the NAS declines, another appropriate private, nonprofit, scientific entity—of all scientific evidence, studies, and literature pertaining to the human health effects of exposure to Agent Orange and its component compounds and for a report, due by October 1, 1988, on the review's results as to the weight of the evidence of this subject (section 115).

Part C—Education Provisions

Part C of this title contains amendments to chapters 30, 31, 34, 36 and 51 of title 38 that would:

1. Provide for two 50-minute periods of laboratory instruction, rather than two 60-minute periods of such instruction, to be considered a standard class session (section 121).

2. Toll the eligibility periods for GI Bill and certain other education-benefits or rehabilitation programs for certain veterans and other eligible persons who have been prevented from participating in such programs because of drug or alcohol dependence or abuse disabilities (section 122).

3. Give the Administrator, in the cases of certain institutions having a demonstrated record of compliance with all of the applicable requirements under VA education programs, authority to waive the requirement for an annual compliance survey (section 123).

4. Require that the effective dates relating to awards under chapter 32 of title 38 (Post-Vietnam Era Veterans' Educational Assistance) correspond, to the extent feasible—as the effective date for all other VA education programs are required to correspond—with the effective dates for VA compensation (section 124).

5. Repeal the program under which education loans in the form of accelerated payments of educational assistance allowances were authorized for certain veterans contingent upon the veteran's state having established a matching fund program (section 125).

Part D—Insurance Provisions

Part D of this title contains amendments to chapter 19 of title 38 that would:

1. Authorize the Administrator periodically to adjust the dollar amounts of the monthly installments payable to a beneficiary of National Service Life Insurance, United States Government Life Insurance, Veterans Special Life Insurance, or Veterans Reopened Insurance who is receiving payments under a life annuity settlement option (section 131).
2. Prohibit the states from imposing any taxes on premiums paid under a Servicemen's Group Life Insurance or Veterans' Group Life Insurance policy (section 132).
3. Authorize the Administrator to exercise the option of administering the Veterans Mortgage Life Insurance program (for veterans who are eligible for VA specially-adapted housing assistance) either directly by the VA or (as required by current law) by contract with a commercial insurance company acting as the insurer (section 133).

Part E—Pension Provision

The provision of this title would amend chapter 15 of title 38 to expand the existing exclusion for proceeds from fire insurance policies, for purposes of pension and parents' DIC income computations, to encompass reimbursement of market or reasonable replacement value from any source for property loss from any cause (section 141).

TITLE II—RADIATION EXPOSURE BENEFITS

This title contains freestanding provisions and amendments to part II of title 38 and Public Law 98-542 that would:

1. In the cases of veterans who were exposed to radiation in connection with the atmospheric nuclear weapons testing program or the American occupation of Hiroshima or Nagasaki, Japan, and who apply by September 30, 1991:
    (a) Provide for the payment of a benefit at a rate equal to the disability compensation payable for the percentage of disability involved to those who have (or in the case of deceased veterans, a benefit equal to DIC to the survivors of those who died from) (1) leukemia (except for chronic lymphocytic leukemia) or thyroid cancer, or, (2) if exposed to more than 1 rem of radiation, cancer of the small intestine, stomach, liver (except where cirrhosis or hepatitis B is indicated), bile ducts, gallbladder, or pancreas, lymphomas (excluding Hodgkin's disease), or multiple myeloma (section 203).

    (b) Require that, in the case of claims based on certain other cancers—cancer of the colon, lung, esophagus, rectum, pharynx, liver (when cirrhosis or hepatitis B is indicated), kidney, urinary tract, bladder, brain and nervous system, salivary glands, and bones and joints, and cutaneous melanoma—the claims receive special consideration, which would include the VA giving conclusive weight to the Congressional findings in the Committee bill relating to the relationship between the particular disease, its susceptibility to radiation exposure, and its link to other significant risk factors (section 203).

(c) Upwardly adjust the applicable Defense Nuclear Agency radiation exposure estimates through the use of a formula based on the estimated radiation exposure for all the participants in the nuclear weapons testing operation involved (section 204).

2. Preserve radiation-exposed veterans' (and their survivors') current-law rights to receive compensation (and DIC) (section 206).
3. Extend by 2 years, from September 30, 1989, to September 30, 1991, VA health-care eligibility for radiation-exposed veterans (and dioxin-exposed Vietnam veterans) (section 207).
4. Require the Veterans' Advisory Committee on Environmental Hazards to submit its reports to the Senate and House Committees on Veterans' Affairs in addition to the Administrator of Veterans' Affairs (section 208).

TITLE III—HEALTH CARE

This title contains provisions to make various improvements in VA health-care programs and in the administration of such programs.

Part A—Health-Care Programs

Part A of this title contains freestanding provisions and amendments to chapters 17 and 73 of title 38 that would:

1. Authorize the VA to furnish services to help a male or a female veteran or a male veteran's spouse achieve pregnancy in cases in which the veteran's service-connected disabilities impair procreative ability (section 301).
2. Authorize the VA to contract with non-VA health-care entities (a) to provide emergency hospital care for a veteran who is being furnished nursing home care in the community under a VA contract, and (b) to provide inpatient or outpatient observation and examination of a veteran to determine eligibility for a VA benefit (section 302).
3. Update the requirement for the Administrator to submit to the Senate and House Committees on Veterans' Affairs an annual report on the provision of contract health care (section 303).
4. Authorize the VA to provide contract care outside of the United States (a) for the treatment of the service-connected disability of a veteran who is not a United States citizen, or (b) to a veteran who is participating in a VA vocational rehabilitation program (section 304).
5. Revise the eligibility criteria for domiciliary care so as to provide eligibility to veterans who are in need of such care for the purpose of receiving treatment or rehabilitation and who either have a service-connected disability or are incapacitated from earning a living and have no adequate means of support (section 305).
6. Require that the VA conduct a 4-year pilot program at not less than 5 nor more than 10 demonstration project sites for the purposes of furnishing health and (by contract with non-VA entities) health-related services in noninstitutional settings; that care be provided using a VA case manger to coordinate and facilitate serv-

ices contracted for with public and private agencies; that participation be limited to veterans eligible for and otherwise in need of VA hospital, nursing home, or domiciliary care and priority for care and services through the pilot program would be accorded to (a) those with service-connected disabilities, (b) those 65 years of age or older, (c) those who are totally and permanently disabled, and (d) those who are suffering from Alzheimer's disease or another form of dementia; and that the total cost of conducting the pilot program would be limited to 60 percent of the cost that would have been incurred by the VA if the veterans had instead been provided care in nursing homes (section 306).

7. Provide for the VA, when contracting for community nursing home care for eligible veterans in Alaska or Hawaii, to pay at a rate of up to 45 percent (or up to 50 percent, if determined to be necessary) of the cost of general community hospital care in that State (section 307).

8. Require that the VA (a) establish a system wide education and training program, including (1) a plan to distribute periodically the Surgeon General's Report on AIDS and other materials on AIDS, with the goal of providing pertinent information to VA beneficiaries and employees, and (2) provide that the Surgeon General's report be distributed to each veteran-patient identified as being at high-risk for AIDS, (b) to establish and implement a plan for AIDS education, training, and clinical-skills-improvement and other activities for all VA health-care personnel and infection control procedures for such personnel and VA health-care support staff (section 308).

9. Prohibit the records of the identity, diagnosis, or treatment of any patient infected with the AIDS virus from being disclosed except in medical emergencies or for the purpose of conducting scientific research and audits, but authorize the release of that information to a public health officer in a state requiring the infection to be so reported or to federal health officers pursuant to a requirement of federal law (section 308).

10. Prohibit the VA from implementing any widespread HIV-Testing program—that is, a program for offering testing and counseling to patients other than substance-abuse patients and patients at high-risk for AIDS—unless Congress specifically appropriates funds for that purpose (section 308).

11. Restrict the Administrator's authority to prescribe limitations, not consistent with title 38 provisions, on the furnishing of health-care services by the VA so as to permit the exercise of that authority only in times of national or regional emergencies other than periods of armed conflict, which are covered in current law (section 309).

12. (a) Increase VA per diem payments for domiciliary care to $8.70 from $7.30 and for nursing home and hospital care to $20.35 from $17.05 and $15.25, respectively; and (b) authorize the VA to increase these rates annually, beginning in fiscal year 1989, by a percentage not greater than the percentage increase in the cost of care in VA general hospitals (which is calculated for purposes of determining the maximum amount the VA may pay for contract care in community nursing homes) (section 310).

13. Make technical adjustments in provisions, enacted in 1986, establishing a priority system for awarding State Veterans' Home construction grants so that, if the Administrator determines that a State has submitted drawings and specifications for a project which are at least 80-percent complete and that the project application would meet all remaining requirements within 6 months, the Administrator would be authorized to make an award of a grant while withholding payment until all requirements are actually met (section 311).

14. Specify that VA per diem payments to State Homes are not to be considered "third-party liabilities" for purposes of payments under the Medicaid program (section 312).

15. Modify the effective date of the Gramm-Rudman-Hollings sequestration exemption for the Special Therapeutic and Rehabilitation Activities Fund, a self-sustaining revolving fund, to provide for the recovery of funds sequestered during FY 1986 (section 313).

16. Authorize the VA (a) to provide, or assist veterans' service organizations in providing recreational activities which would further the rehabilitation of disabled veterans if the activities are available on a national basis and a significant percentage of the participants are veterans eligible for VA rehabilitative services, and (b) to accept contributions for these recreational activities and permit the donor to advertise its participation as long as the advertisement clearly states that the VA has not endorsed any product or commercial endeavor (section 314).

17. Require the Administrator to implement a 2-year mobile health clinic pilot program of four geographically dispersed projects using appropriately equipped mobile clinics to furnish care in rural areas where veterans live at least 100 miles from the nearest VA health-care facility (section 315).

18. Require that mental illness research be added as a specific DM&S research mission—along with biomedical, prosthetic, and health-care services research (section 316).

19. Require the Administrator to submit to both Committees on Veterans' Affairs a report designed to promote increased efforts by affiliated medical and other health-professional training schools in educating health-care professionals to care for older patients and in research into the aging process and diseases and disabilities associated with aging (section 317).

Part B—Health-Care Administration

Part B of this title includes freestanding provisions and amendments to chapters 17, 81, and 83 of title 38 that would:

Subpart 1—Health-Care Personnel

1. (a) Authorize the appointment of, in addition to physicians, certain nonphysician health-care professionals to various positions in the office of the Chief Medical Director (CMD); and (b) specify that all individuals appointed to positions in the office of the CMD must be qualified in the administration of health services (section 321).

2. Shift VA pharmacists and occupational therapists into the so-called title 38/title 5 "hybrid" category under which the agency

may use title 38 appointment, pay, and promotion policies for specified employees employed under the title 5 personnel system (section 322).

3. Provide that all matters relating to adverse actions, disciplinary actions, and grievance procedures involving title 38/title 5 hybrid employees will be resolved in accordance with the provisions of title 5 as though the employees in questions were appointed under title 5 (section 323).

4. (a) Provide that the procedures set forth in title 5, United States Code, for the resolution of specific lesser disciplinary actions (admonishments, reprimands, suspensions of 14 days or less, and transfers not involving loss of grade) would be used in cases involving title 38 personnel (including the use of a negotiated grievance procedure involving an appeal to an arbitrator); and (b) establish for title 38 employees a grievance-resolution process that parallels that available to title 5 employees (section 324).

5. Require that nurses who work on Saturdays be paid the same premium pay currently applicable to Sunday work (section 325).

6. Establish a tuition-reimbursement program for full-time nursing personnel and, when needed, for other full-time health-care personnel, for academic courses leading to completion of any degree program in nursing or in a field related to nursing, or in other appropriate degree-granting fields for other personnel—with first priority in the selection of participants to be given those with 2 years service within the VA whose performance is superior and second priority to others with 2 years of service (sections 326).

7. (a) Make eligible for the VA's Health Professional Scholarship Program (in addition to physicians and nurses) physical therapists and other individuals providing direct patient-care services or services incident to direct patient-care services; (b) require a minimum of 2 years of obligated service for each year of scholarship aid; and (c) require that priority in the award of nurse scholarships be given to nurses seeking a fourth year of baccalaureate education (section 326).

8. Authorize recruitment and retention bonuses of up to $20,000 over a 4-year period to full-time registered nurses, or other full-time health-care personnel except for dentists and physicians, not presently fulfilling a VA scholarship work obligation and who agree to work for a period of 4 years in a specific geographic area or professional specialty experiencing recruitment and retention problems (section 327).

9. (a) Authorize the VA to utilize the title 38 "on-call" pay provisions, rather than the title 5 "standby" pay provisions, for newly hired or newly assigned title 5 health-care personnel; and (b) specify that title 5 employees currently earning standby pay who are assigned to on-call status would be entitled to continue to receive pay under the standby system (that is, be grandfathered into that pay status) so long as their employment status does not change (section 328).

10. Require that Chiefs of Nursing Service *or* their designees at VA health-care facilities be members of those facilities' policy-making and fiscal committees (section 329).

11. Authorize the CMD to waive (a) state licensure or registration requirements as appropriate, for practical and vocational nurses or

physical therapists if they are to be employed (1) in research or academic work and are to have no direct patient-care responsibilities, or (2) in a country other than the United States and the practitioner's license is in the country in which he or she is to work, and (b) the requirement that psychologists complete a one-year internship if they are to be employed in research or academic work and are to have no direct patient-care responsibilities (section 330).

12. Require the Administrator to increase rates of pay for VA psychologists who have board certification by using the "hybrid" title 5/title 38 appointment authority unless the CMD certifies that an increase of board-certified psychologists is clearly not necessary for the furnishing of effective psychological services to veterans (section 331).

13. Require the Administrator to study and report on various issues relating to enhancing the VA's recruitment and retention of VA health-care personnel (section 332).

14. Prohibit the VA from conducting any program of testing VA employees for the use of illegal drugs, as defined under Executive Order 12564 (September 17, 1986) except in three circumstances—(1) when there is a reasonable suspicion that an employee uses illegal drugs, (2) in an examination authorized by the VA regarding an accident or unsafe practice (which in the provision of health care would be defined to be an unsafe practice that has resulted or could reasonably be expected to result in an adverse patient outcome), or (3) as part of or as a follow-up to counseling or rehabilitation for illegal drug use through an Employee Assistance Program (section 333).

Subpart 2—Other Medical Administration Matters

1. Repeal the Administrator's authority to provide free cigarettes to veterans receiving hospital or domiciliary care (section 341).

2. Clarify that the period during which the VA may institute legal action to recover the cost of certain hospital, nursing home, domiciliary, and medical care is 6 years after the last day on which the care for which the recovery is sought was furnished (section 342).

3. Expand the scope of the provision of law under which the Federal Government accepts liability for the negligent acts of its employees acting within the scope of their employment so as to cover so-called intentional torts of VA health-care employees committed in the course of furnishing health-care services (section 343).

4. Replace the existing Veterans' Affairs Committees approval-resolutions process for VA major medical construction or acquisition projects with a legislative authorization process under which it would not be in order in either House to consider a bill, resolution, or amendment appropriating funds for (a) a VA major medical construction project (one costing over $2 million) unless the amount for the project is specified in the appropriations measure and does not exceed the amount authorized for the project by a provision of law enacted in legislation reported by the Veterans' Affairs Committees, or (b) a medical facility lease with an estimated annual rental exceeding $500,000 unless the lease has been authorized in such a law (section 344).

5. Replace the current law prohibition against the Administrator increasing "the estimated cost" of a construction or acquistion "in the contract" to an amount more than 10 percent above that specified in the Committee's resolution with a requirement that the Administrator give the Committees 30 days' advance notice whenever the cost of a project would exceed by more than 10 percent the amount specified in the authorizing legislation (section 344).

6. Require the VA to develop and implement an agency-wide plan for the cost-effective standardization, in a manner consistent with the effective furnishing of health-care services, of medical and pharmaceutical items procured by the VA, including provision for the procurement of generic pharmaceutical items that are cost-effective, except where the Chief Medical Director, after consultation with the FDA, determines that an equivalent generic item is not available or that the availability of a brand-name item is necessary in the interests of effective patient care (section 345).

7. Require the VA to procure medical and pharmaceutical items only under national contracts except where purchase by a local contract is necessary because (a) the item is not available for procurement under a national contract, (b) the item is needed for the effective furnishing of a health-care service or the conduct of a research or education program at a VAMC, or (c) an emergency need has arisen; require that, except for emergency procurement, not more than 20 percent of all medical and pharmaceutical items procured by the VA in any fiscal year would be permitted to be procured under local contracts and that such contracts, to the maximum extent feasible, be awarded to persons regularly engaged in the wholesale supply of such items; and permit the percentage limitation to be increased to not greater than 30 percent based on 2 fiscal years of experience under the new program, if the President determines that the increase and the amount of the increase are necessary in the interest of the effective furnishing of health-care services by the VA (section 346).

8. Require (a) that each VA medical center director submit to the Administrator by December 1 each year (beginning in 1988) a report on local-procurement contracts during the previous fiscal year, and (b) that the Administrator submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives, not later than February 1 of each year (beginning in 1989), a report on the agency's experience in the procurement of medical and pharmaceutical procurement during the most recent fiscal year, incuding a summary list indicating the quantity and cost of pharmaceutical items procured at VA medical centers under local contracts during the most recent fiscal year (section 346).

9. Authorize the VA to use multi-year procurement contracts except where multi-year purchasing would interfere with maximum effective procurement of generic drugs (section 347).

TITLE IV—MISCELLANEOUS

This title contains freestanding provisions and amendments to chapter 24 of title 38 and Public Laws 99-272 and 99-576 that would:

1. Prohibit the Administrator from taking any action to dispose of any portion of certain lands at two VA medical centers in Southern California (section 401).

2. Authorize the Administrator, upon the recommendation of the Chief Medical Director, to waive the requirement for upright grave markers in a VA national cemetery if the Administrator determines that the use of upright markers at that cemetery would have a detrimental effect on the health of veterans receiving care at a nearby VA health-care facility (section 402).

3. Provide exceptions to the general requirement for upright markers in VA national cemeteries so as to mandate the use of flat markers at the National Cemetery in Riverside, California, and the proposed national cemetery in Northern California (section 402).

4. Direct the Administrator, upon conditions being met, to lease to the United States Department of Labor for nominal consideration 20.6 acres of land at the former Veterans' Administration Hospital, Minot, North Dakota (section 403)

5. (a) Add a representative of Native Hawaiians to the Veterans' Administration Advisory Committee on Native American Veterans; and (b) extend the life of the advisory committee by approximately one year, until about May 1, 1989 (section 404).

Discussion

TITLE I—COMPENSATION AND OTHER BENEFITS

Part A—Compensation and Related Cost-of-Living Adjustments

Compensation Rate Increases

Section 101 of the Committee Bill, which is identical to section 101 of S. 9 as introduced, would require the Administrator to adjust, effective December 1, 1987, the rates and limitations for compensation paid to veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) paid to certain service-connected disabled veterans' survivors. The adjustment would be the same pecentage—4.2 percent—as that which will be provided to Social Security recipients and VA pension beneficiaries effective the same date. These increased benefits would actually be paid beginning on January 1, 1988.

Background

The service-connected disability compensation program provides monthly cash benefits to veterans who have disabilities that were incurred or aggravated during active service in our Nation's Armed Forces.

The amount paid in individual instances is contingent upon the nature of the veteran's disability or combination of disabilities and the extent to which earning capacity is considered to have been impaired. Compensable disabilities are rated according to the VA's Schedule for Rating Disabilities on a graduated schedule ranging from 10 to 100 percent. Higher monthly rates are payable to totally disabled veterans with certain specific, very severe disabilities and combinations of disabilities.

As of June 1987, the disability compensation program was providing benefits for 2,214,207 veterans who have service-connected disabilities. This number includes disabled veterans with the following periods of service: 8,312 World War I veterans; 989,347 World War II veterans; 218,314 Korean-conflict veterans; and 620,917 Vietnam-era veterans. A veteran whose disability is rated at 30 percent or more may receive additional compensation for the veteran's spouse, children, and dependent parents. These dependents' allowances are pro-rated according to the percentage of disability. As of March 1987, 677,121 veterans were receiving additional compensation for 1,064,753 dependents.

DIC is paid to the survivors—surviving spouses, unmarried children under the age of 18, as well as certain helpless children age 18 or over, children between the ages of 18 and 23 who are enrolled in school, and certain needy parents—of servicemen or veterans who died on or after January 1, 1957, from a disease or injury incurred or aggravated during active service.

Surviving spouses, children, and parents who are receiving death compensation by reason of a veteran's death occurring before January 1, 1957, may elect instead to receive DIC. However, they cannot, thereafter, receive death compensation.

DIC is paid to surviving spouses at rates determined by the pay grade—service rank—of the deceased veteran. A higher rate is payable if the surviving spouse is so disabled as to be housebound or in need of regular aid-and-attendance, and additional amounts are payable for the veteran's surviving children. Children become entitled to DIC where there is no surviving spouse, or where a child age 18 or over became permanently incapable of self-support before reaching age 18, or where a child is age 18–23 and pursuing an approved course of education. As of June 1987, DIC benefits were being paid to or for 312,028 surviving spouses and children and 36,998 needy surviving parents. Under section 3112 of title 38, United States Code, the parents' DIC rates are automatically adjusted at the same time and by the same percentage as are Social Security and VA pension benefits.

Under 410(b) of title 38, benefits are also paid at DIC rates to the surviving spouse and children of veterans whose deaths are not determined to be service-connected, where the veteran received compensation at the 100-percent rate over an extended period of time immediately prior to his or her death.

History of cost-of-living increases

The Committee periodically reviews the service-connected disability compensation and DIC programs with a view toward assuring that the benefits authorized provide reasonable and adequate compensation for disabled veterans and their families. Congress has acted periodically to provide cost-of-living adjustments (COLA's) in compensation and DIC benefits in order to ensure that those benefits keep pace with inflation. In fact, Congress has provided for annual increases in these rates every fiscal year since 1976. The following table shows the percentage increases since 1970.

TABLE 1.—HISTORY OF SERVICE-CONNECTED DISABILITY COMPENSATION INCREASES, 1970 TO PRESENT

	Month	Increase (percent)	Cumulative (1969=100)
Year:			
1970	July	10	$110.00
1972	August	10	121.00
1974	May	17.2	141.00
1975	August	11.8	158.55
1976	October	8.0	171.23
1977	October	6.6	182.53
1978	October	7.3	195.86
1979	October	9.9	215.25
1980	October	14.3	246.03
1981	October	11.2	273.58
1982	October	7.4	293.82
1983	April	3.5	304.11
1984	December	3.2	313.84
1985	December	3.1	323.57
1986	December	1.5	328.42

In fiscal year 1987, expenditures for the compensation and DIC programs combined totalled approximately $10.4 billion.

Committee bill

The Committee bill would direct the VA to compute and provide for increases in the monthly rates of compensation and DIC, effective December 1, 1987, equal to the percentage of the Social Security/VA pension benefits COLA—which on October 23 was announced to be 4.2 percent—effective on December 1.

The rate adjustment provided by the Committee bill would apply to the monthly rates of disability compensation under section 314 of title 38, United States Code (except for the monthly rate specified in subsection (k) of section 314); the rates of additional monthly compensation for dependents payable under section 315 to veterans rated 30-percent or more disabled; and the annual clothing allowance under section 362 for disabled veterans who must use prosthetic or other orthopedic appliances, such as wheelchairs, that tend to tear or wear out their clothing. The limitations in subsections (k) and (p) of section 314 on the maximum monthly amount payable to a veteran who would otherwise be entitled to a higher amount by reason of entitlement to two or more rates would also be increased.

The COLA would also apply to the basic DIC rates for surviving spouses and children and to the additional allowances paid to surviving spouses who are in need of aid-and-attendance or are housebound, helpless children age 18 or over, and children between the ages of 18 and 23 attending school.

The increases in DIC would automatically result in identical percentage increases in the benefits paid at DIC rates, under section 410(b) of title 38, to the surviving spouses and children of certain totally disabled service-connected disabled veterans whose deaths were not service connected but who, at the time of death, were continually rated totally disabled for either at least 10 years or so rated for at least 5 years from the date of discharge. Also, by virtue of section 156(e)(1)(A) of Public Law 97-377 (a fiscal year 1983 continuing appropriations measure enacted on December 21, 1982), the DIC increases would automatically result in an increase, also effective December 1, 1986, in benefits paid in lieu of Social Security survivors' benefits terminated by section 2205 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) to certain survivors of those who died on active duty or from a service-connected disability—namely, to surviving spouses for children ages 16 and 17 and for secondary-school students over age 19.

In written testimony for the June 30, 1987, hearing, the VA testified, "[T]he VA generally supports legislation that would safeguard benefits from the erosive effects of inflation. However, we believe the policy evident in S. 9 may best be effectuated by legislation that would provide for an automatic annual increase in compensation rates indexed to the periodic increases in the cost of living." All other witnesses at the June 30 hearing opposed such indexing and the Committee likewise disagrees with permanently linking compensation and DIC COLA's to annual Social Security increases.

The percentage increase of the Social Security COLA did not become known until late October. The Congressional budget for fiscal year 1988 (H. Con. Res. 93) as adopted on June 23, 1987, is based on the assumption that the COLA would be 4.1 percent, and the Congressional Budget Office (CBO) was, as of the date of the Committee's July 31 meeting on this legislation, officially estimating that the increase would be 4.1 percent, Rather than selecting any particular percentage adjustment at the time it ordered the bill reported, the Committee adopted the statutory tie-in to the Social Security increase this year as the most equitable means of providing for this increase in these service-connected benefits.

Specially Adapted Housing Increase

Section 102 of the Committee bill would increase by 12.7 percent, from $35,500 to $40,000, effective October 1, 1987, the maximum amount payable in specially adapted housing assistance, under the so-called "wheelchair home" program, to certain veterans with total and permanent service-connected disabilities that impair their mobility. Section 102 would amend section 802(b) of title 38 to increase by 12.9 percent, from $6,000 to $6,775, effective July 1, 1988, the maximum amount payable for special housing adaptions to certain veterans suffering from service-connected total blindness or the loss or loss of use of both extremities.

Under the wheelchair home program, the VA provides veterans who have certain permanent and total service-connected disabilities involving mobility impairments with assistance in acquiring suitable housing with adaptations made necessary by the nature of their disabilities. Under current law, these disabled veterans are eligible for a grant not to exceed 50 percent of the cost of the home and necessary land, up to a maximum of $35,500. Veterans eligible for housing assistance grants are principally quadriplegics, paraplegics, amputees, and certain others who because of their service-connected disabilities, require the use of a wheelchair, braces, cane, or crutches to move about. Their disabling conditions typically require ramps, special bathroom equipment, extra-large rooms and hallways, and various other adaptations that are extremely helpful for their health and safety.

Increases in the maximum amount of the grant have been provided periodically. When originally enacted in Public Law 80-702 in 1948, the specially adapted housing program provided for assistance of up to $10,000. At that time, the median cost for an existing single-family residence was $7,075. Housing costs have risen enormously since then, and the maximum amount of assistance has been increased on six occasions. The last increase, up to $35,500, effective January 1, 1985, was made by Public Law 98-543. According to the National Association of Realtors, the median cost of an existing single-family-home at that time was $75,500 and, in 1987, that cost has increased to $85,000.

By raising the maximum limit of the assistance by 12.7 percent, to $40,000, the Committee bill would help ameliorate the erosion in the value of this benefit made by increases in housing costs over the last 2½ years.

The section 801(b) program of assistance for special housing adaptations for certain veterans suffering from service-connected total blindness or the loss or loss of use of both upper extremities was enacted in 1980 by section 301 of Public Law 96-385. Under this program, an eligible veteran is entitled to assistance, up to a maximum of $6,000, for the purposes of making special adaptations that the Administrator determines are reasonably necessary because of the veteran's disability. This maximum amount was last increased from $5,000 to $6,000, effective January 1, 1985, in order to ameliorate the erosion resulting from increases in construction costs. Raising the maximum to $6,775, would help offset the effects of inflation on this benefit since that time.

Automobile Assistance Allowance Increase

Section 103 of the Committee bill would increase by about 11 percent, from $5,000 to $5,530, effective October 1, 1987, the maximum amount payable for the automobile assistance allowance to veterans with certain severe, service-connected disabilities.

The program of automobile assistance grants—now codified in chapter 39 of title 38, United States Code—was established by the Congress in Public No. 79-663, which was enacted in 1946. Under this program, veterans who have suffered the service-connected loss or loss of use of one or both feet or hands or service-connected blindness are entitled to a one-time VA grant to assist them in purchasing an automobile.

Public Law 91-666, enacted in 1970, increased, effective January 11, 1971, the maximum amount of the allowance payable toward the purchase of an automobile or other conveyance from the original $1,600 to $2,800. The purpose of the 1971 increase was to reestablish generally the comparability which originally existed between the cost of an automobile or other conveyance and the monetary assistance provided for its purchase.

In 1974, 1978, 1981, and 1984, increases were enacted into law by Public Laws 93-548, 95-479, 97-66, and 98-543, respectively. From the date of the last increase, January 1, 1985, to August 1987 the

Bureau of Labor Statistics' Consumer Price Index component for new automobiles rose by 9.73 percent.

Taking into account any further inflation occurring after August and prior to the effective date of the increase, increasing the automobile assistance allowance by 10.6 percent, from $5,000 to $5,530, would thus help protect the value of this benefit from being eroded by inflation. According to the VA, 909 veterans received automobile assistance allowances in fiscal year 1986 and the average benefit payment was $4,783. In fiscal year 1987, the VA estimates that 550 veterans will receive assistance under this program.

Service-Connected Burial Allowance Increase

Section 104 would amend section 907 of title 38 to increase by 105 percent, from $1,100 to $2,250, the VA allowance for funeral and burial expenses paid at the request of the survivors for a veteran who dies of a service-connected cause.

Until 1974, there was no difference between the funeral and burial benefits paid to the survivors of veterans who died from service-connected causes and those who died from non-service-connected causes. The amounts so provided for funeral and burial expenses were substantially less that the average funeral and burial costs nationwide. In recognition of the greater Federal responsibility for service-connected deaths, the Congress in 1973 enacted legislation to increase substantially, from $250 to $800, the maximum allowance payable for such deaths. That legislation, section 5(a)(2) of the National Cemeteries Act of 1973 (Public Law 93-43), tied the amount of allowances payable to the amount payable under section 8134(a) of title 5, United States Code, on behalf of Federal employees who die from injuries sustained in the performance of their duties.

However, the $800 maximum payable under the title 5 provision was set in 1958 and has not been increased despite the very substantial rise in funeral and burial expenses over the past 29 years.

In 1978, based on an estimate from the National Association of Funeral Directors that the average cost of a funeral, including the basic funeral and the casket, had risen to $1,348, the Congress in Public Law 95-479 raised the maximum to $1,100, slightly more than 80 percent of the average funeral cost.

According to the National Association of Funeral Directors, a study by the Federation of Funeral Directors has found that the cost of an average adult funeral was $2,922 in 1987—more than two and a half times the amount of the VA allowance for service-connected deaths.

In the Committee's view, the highest priority of VA programs relating to burial and cemetery benefits should be assistance to the survivors of these veterans who die from service-connected causes. Therefore, in view of the substantial increase in the cost of burial sinece 1978, the Committee bill would increase the maximum allowance in such cases to $2,250, restoring the allowance to approximately 80 percent of the cost of an average funeral.

Part B—Other Compensation-Related Provisions

Former POW Presumptive Compensation

Section 111 of the Committee bill, which is derived from S. 1365, would amend section 312 of title 38 to provide presumptions of service connection for former prisoners of war (POWs) who suffer from peripheral neuropathy, peptic ulcer disease, or irritable bowel syndrome (IBS) if the disabilities become 10 percent or more disabling, even though there is no record of the disease during the veteran's period of service. Section 111 also would amend section 612(b)(1)(G) of title 38 to reduce from 6 months to 90 days the period of internment required to establish eligibility for outpatient dental treatment.

Background

Although many former POWs have been awarded VA disability compensation, former POWs often face practical difficulties in establishing service connection for disabilities from which they currently suffer. In recognition of those difficulties, Public Law 91-376 was enacted in 1970 to create rebuttable presumptions of service connection with respect to certain disorders. Since that time additional presumptions have been created. Current law (section 312(b) of title 38) provides presumptions of service connection for 12 conditions for former POWs detained or interned for not less than 30 days, when the disease becomes manifest to a degree of 10 percent or more disabling.

In a 1981 study mandated by Public Law 95-479, the VA found that, although the particular type and source of hardship differed significantly according to place and time of internment, American POWs from each of the three most recent wars—World War II, Korea, and Vietnam—were subjected to widespread hardships that often included extreme malnutrition, great psychological stress and abuse, inadequate medical care, brutal living conditions, and, very frequently, physical and psychological torture.

In general, the VA report concluded, "Serious limitations in knowledge as to the delayed effects of such stresses and deprivations as [were] experienced by prisoners of war [are] . . . a major obstacle for decisionmakers [in the VA claims adjudications process]."

In addition to suffering from disabilities that are difficult to detect or to attribute to a specific cause, the VA report also concluded that former POWs from World War II and Korea claiming service connection are often confronted with problems arising from the absence or inadequacy of records of their repatriation examinations. Accordingly, a record of health conditions manifested during service, which would provide the necessary information to establish that a disability is service connected, is unavailable in many cases.

The diagnosis of—and thus research on—the diseases included in the Committee bill is made difficult because their symptoms, particularly in the cases of peptic ulcer disease and IBS, can vary greatly from one individual to the next and because of a necessary reliance on evaluation of subjective factors, such as pain. The only significant morbidity study of former POWs is the National Academy of Sciences' (NAS) longitudinal study of a group of former POWs, which began shortly after the end of World War II and is still ongoing. However, that study did not include any direct clinical assessment of its subjects. In August 1986, therefore, the NAS began a comprehensive Medical Examination Survey of Former POWs from World War II and the Korean Conflict, which is expected to be completed in August 1988. Two thousand former POWs and 2,000 matched controls are undergoing physical examinations at VAMCs across the country, pursuant to the standardized format established in the VA's protocol for POW examinations and will be providing data on medical questionnaires which will be analyzed by the NAS.

Notwithstanding the pendency of the NAS study, the infomation which is currently available indicates that the conditions experienced by former POWs while in captivity—such as severe malnutrition, extreme stress, and exhausting physical exertion—likely are significant risk factors for these diseases.

The VA Advisory Committee on Former Prisoners of War (Advisory Committee), in its Biennial Report submitted to the Committee in August 1987, supported the enactment of legislation to presumptively service connect peripheral neuropathy, peptic ulcer disease, and IBS. In written testimony submitted for the committee's June 30, 1987, hearing, the VA questioned the need for presumptive compensation for the three conditions specified in S. 1365, stating, "those former POW's who have the conditions would ordinarily have presented their claims years ago and likely would have had the conditions service-connected. To grant service connection decades after the fact of internment would do no more than recognize mere speculation as to the causality of the disease."

There are approximately 80,000 living former POWs, as shown in the following table:

TABLE 2.—OVERVIEW OF AMERICAN FORMER POW POPULATION

	Total	WWI	WWII	Korea	Vietnam
Number of POW's	142,227	4,120	130,201	7,140	766
Died during internment	17,026	147	14,072	2,701	114
Alive as of Jan. 1, 1987	80,800	277	76,403	3,505	615

Committee bill

IN the Committee's view, recent studies of both former POWs and the general population indicate that the conditions experienced by former POWs during internment—including severe malnutrition, extreme stress, and exhausting physical exertion—are significant risk factors for peripheral neuropathy, peptic ulcer disease, and IBS.

Peripheral Neuropathy.—This disease involves foot or wrist "drop" (*i.e.,* inability to move the foot or wrist), muscular atrophy, numbness and tingling in the foot or wrist followed by a sensation of heat, and loss of reflex. This particular type of neuropathy is causally related to "cold injury", (injuries resulting from exposure to cold temperatures), exhausting physical activity, and vitamin deficiency resulting from extreme malnutrition, all conditions which were experienced by most former POWs during captivity.

IBS. IBS, sometimes referred to as spastic colon, is a syndrome consisting of altered bowel habits, abdominal pain, and the absence of detectable organic pathology. Symptoms are markedly influenced by psychological factors and stress. IBS is confirmed by positive clinical and laboratory findings, including the exclusion of organic disease. It is one of the least understood gastrointestinal diseases. However, stress and malnutrition have been identified as probable significant risk factors.

Peptic and Duodenal Ulcers.—Those gastric ulcers which occur where the gastrointestinal tract is exposed to hydrochloric acid and pepsin are called peptic ulcers. Duodenal ulcers are peptic ulcers which occur in the duodenum. The appropriate term for these conditions, which would encompass both types of ulcers, is peptic ulcer disease. The same risk factors—including stress and malnutrition—are associated with both peptic and duodenal ulcers. The scientific information supporting the establishment of presumptions for these 3 diseases is summarized as part of Chairman Cranston's introductory statement on S. 1365 (S8156, *Congressional Record,* June 16, 1987).

S. 1365 proposed establishing presumptions of service connection for peripheral neuropathy, peptic ulcer disease, and IBS only where manifestation first occurred within 10 years after the last date of the veteran's internment and there was recurrence continuously or regularly intermittently thereafter. However, in light of testimony received at the Committee's June 30 hearing, including testimony from the American Ex-Prisoners of War, as well as the evidence supporting an association between internment and these diseases, the Committee bill deletes the circumscribing language.

In addition, as recommended by the American Ex-Prisoners of War and the American Defenders of Bataan and Corregidor, the Committee bill also includes a provision reducing to 90 days the current-law dental benefits eligibility requirement of six months of internment.

Systemic Lupus Erythematosus

Section 112 of the Committee bill, which is derved from S. 1491, would amend section 301(3) of title 38 to provide for the inclusion of systemic lupus erythematosus (SLE) among the chronic diseases that are presumed to be service connected for purposes of compensation if becoming manifest to the extent of being 10-percent disabling within one year after veteran's discharge from active service, even through there is no record of the disability during the veteran's period of service.

Background

Under section 312(2) of title 38, a veteran with a chronic disease specified in section 301(3) which becomes 10-percent-or-more disabling during the first year after the veteran's discharge is entitled to have the disease automatically considered to be service-connected unless there is affirmative evidence to the contrary or evidence establishing either that, between discharge and the onset of the chronic disease, the veteran suffered an intercurrent injury or disease which is a recognized cause of the chronic disease or that the disability is due to the veteran's willful misconduct. There are 40 chronic diseases on the section 312(2) list.

Persumptions of service connection for purposes of compensation are not based on a determination that individuals who have service in the military are more likely to have incurred the disease or disability then those who did not. Rather, such presumptions are based on the need to ensure that diseases and disabilities incurred in or aggravated during service are, in fact, determined to be service connected. This need arises most clearly in the cases of diseases that have a latency period of varying length causing early manifestations to be easily overlooked or misdiagnosed or diseases that are otherwise difficult to diagnose.

SLE is such a disease. It is a potentially fatal autoimmune disorder of unknown etiology. It currently afffects more than 500,000 people, predominatly younger women, and can strike many physiological systems including the skin, joints, serous membranes, kidneys, lungs, nervous system, circulatory system and cardiovascular system. Although the disease may start acutely, the course is usually chronic and irregular with periods of activity alternating with periods of remission, thereby making diagnosis very difficult and the manifestations quite diverse. Symptoms include the onset of fever, skin and joint inflammation, anemia, pneumonia, and kidney, heart, eye, and blood diseases.

SLE is instigated by a combination of genetic predisposition and environmental factors. Current data stress the importance of various environmental factors as accelerating or causal elements to a greater degree than previously had been assumed. Accordingly, factors present during the veteran's service may trigger onset of the disease and yet not appear on the veteran's service record. Currently no cure exists and the only method of treatment is symptomatic relief.

During a July 21, 1983, meeting of the Committee, then Committee Member Jennings Randolph introduced an amendment to add SLE to the list of chronic conditions presumed to be service connected for purposes of disability compensation. This amendment failed by a vote of seven to five.

Committee bill

Based on the significant likelihood that SLE had its onset during service in the case of a veteran who develops the disease to the extent of being 10-percent-or-more disabling within one year after service even though it was undetected during service, section 112 of the Commiittee bill would add SLE to the one-year chronic disease presumptive list.

Reinstated Entitlement Program for Survivors (REPS)

Section 113 of the Committee bill, which is derived from section 301 of S. 940, would amend section 156 of Public Law 97-377 to extend eligibility for certain Social Security-equivalent benefits, based on a child's school attendance, under the Reinstated Entitlement Program for Survivors (REPS) to those survivors who are receiving benefits under section 412 of title 38 rather than under the Social Security Act.

Background

Some service persons and veterans who die from service-connected causes are not fully covered by Social Security at the time of their deaths. Their survivors receive benefits—equal in amount to the Social Security benefits that they would have received if the service person or veteran had Social Security coverage at the time of death—under section 412 rather than Social Security benefits. Section 412 benefits are intended to place benefits for survivors without full Social Security coverage on a par with benefits for survivors of those who were fully covered.

The REPS program was established by Public Law 97-377 to "restore" to survivors of those who died from service-connected causes incurred prior to August 13, 1981, the Social Security benefits, based on the school attendance of surviving children, which had been discontinued by Public Law 97-35. In effect, the REPS benefit—which the VA pays out of funds appropriated to the Department of Defense—is a substitute for the benefits which were terminated by Public Law 97-35. However, eligibility for REPS benefits is currently limited to the survivors of veterans who *were* fully covered by Social Security. Some survivors receiving benefits under section 412 are not eligible to receive the REPS benefits under section 156 of Public Law 97-377, they do not currently receive the equivalent of Social Security benefits, contrary to the purpose of section 412.

Committee bill

The Committee bill would eliminate this disparity by extending the REPS benefits to survivors who receive benefits under section 412. This would ensure that benefits for survivors of veterans who were not fully covered by Social Security would once again be on a par with the benefits of the survivors of veterans who were fully covered.

The Committee notes that in 1986 there were 221 awards of benefits under section 412, only a small percentage of which involved school attendance meeting the eligibility criteria for REPS benefits.

Education and Rehabilitation Exemptions

Section 114 of the Committee bill would, effective November 19, 1987, amend section 113(a) of title 38 to make exempt from sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119)—commonly referred to as "Gramm-Rudman-Hollings" (GRH)—as that Act may be amended, or under any other sequestration law which may be enacted, the VA's programs of rehabilitation services under chapter 31 of title 38 for certain service-connected-disabled veterans who have employment handicaps and educational assistance under chapter 35 for the survivors of those who died from service-connected causes or while rated permanently and totally disabled due to a service-connected disability and the dependents of veterans who have service-connected disabilities rated permanently and totally disabling.

Background

In either the original GRH law or in subsequent legislation, Congress has enacted provisions exempting several categories of VA programs from the uniform percentage reductions that are generally required to be made in federal programs during a fiscal year when the deficit-reduction targets for that year would otherwise be exceeded.

First, exemptions were provided for most benefits for which entitlement is based on service-connected death or disability, including compensation paid to veterans with service-connected disabilities; dependency and indemnity compensation (DIC) paid to the survivors of those who died from service-connected causes; specially adapted housing grants, mortgage protection life insurance, and automobile and automobile-adaptive-equipment grants for certain service-connected-disabled veterans; and burial benefits for those who die from service-connected causes. The compensation and DIC exemptions were enacted as part of the original GRH legislation, in section 255(b) of Public Law 99-177. Exemptions for the other benefits were enacted in section 601 of the Omnibus Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 (Public Law 99-576), effective beginning with fiscal year 1987.

Second, section 601 of Public Law 99-576 provided 1-year-only—fiscal year 1987—exemptions for two programs of benefits for which entitlement is based on service-connected death or disability, namely the chapter 31 and chapter 35 programs described above.

Third, section 255(b) of the original GRH law also made the VA non-service-connected disability and death pension programs exempt.

Fourth, section 601 of Public Law 99-576 also provided exemptions for two self-sustaining VA revolving funds—the special therapeutic and rehabilitation activities fund and the canteen service revolving fund—effective beginning with fiscal year 1987.

Fifth, section 255(g)(2) of the original GRH law provided an exemption for the Government's "prior legal obligations" under VA-administered insurance programs and, after the Administration ruled that that exemption did not cover insurance policy loans under those programs, Congress enacted in section 601 of Public Law 99-576 a permanent exemption for such loans, effective beginning with fiscal year 1987.

Sixth, in the case of VA-guaranteed home loans, Congress enacted two emergency measures, Public Law 99-255 and section 1 of Public Law 99-322, raising the cap which the March 1, 1986, fiscal year 1986 sequestration order--based on what proved to be a far-too-low estimate of the volume of VA loan guaranty commitments that would be issued in fiscal year 1986 in the absence of a cap—had placed on the making of VA loan guaranty commitments in fiscal year 1986. Ultimately, the second increase, to $38.28 million—made on the basis of an updated estimate as of mid-May of the fiscal year 1986 volume if uncapped—exceeded by about $4 billion the total amount of commitments issued by the VA in fiscal year 1986 and thus provided a *de facto* exemption for that year.

In addition, section 256 of the original GRH law limits the maximum sequestration reduction in the VA's medical care account to 1 percent in fiscal year 1986 and 2 percent in any subsequent fiscal year, except that those limits do not apply to medical care account funding for the administrative expenses of furnishing care.

In Public Law 100-119, the 1987 GRH "reaffirmation" legislation, the permanent exemptions provided in Public Law 99-576 were added to the exemptions listed in section 255(b) of GRH.

Committee bill

The Committee believes that a permanent exemption should now be enacted for benefits under chapter 31 and 35. As noted above, most service-connected VA benefits have been made permanently exempt from sequestration. Only in the cases of the VA's programs of rehabilitation for service-connected disabled veterans, under chapter 31, and the program of educational assistance for survivors and dependents, under chapter 35, have exemptions been limited to one year. The Committee believes that permanent exemptions for these high-priority service-connected benefits should be enacted.

With respect to chapter 31, the Committee notes that it will be undertaking an in-depth review of the VA's vocational rehabilitation program during the present Congress.

The Committee notes that, in section 2(b) of S. 1801, it has also proposed a permanent exemption of benefits under chapter 37 of title 38, relating to home loan guaranties. On October 30, 1987, the Senate passed H.R. 2672 with an amendment in the nature of a substitute containing the provisions of S. 1801.

Scientific Review of Agent Orange Evidence

Section 115 of the Committee bill, which is derived from S. 1510, is a freestanding provision to require that the VA contract, subject to the availability of appropriations, for a comprehensive review to be conducted—by the National Academy of Sciences (NAS), or, if the NAS declines, another appropriate nonprofit scientific entity—of all scientific evidence, studies, and literature pertaining to the human health effects of exposure to agent orange and its component compounds, to be completed not later than October 1, 1988, and that a report be submitted on the review's results as to the weight of the evidence on this subject.

Background

Serious questions have been raised, beginning in the late 1970's, regarding veterans' exposure in Vietnam to agent orange and its highly toxic contaminant, dioxin. The Committee has been deeply concerned for many years about the possible long-term adverse health effects of this exposure and the need for responsible government action. Accordingly, a major focus of the efforts of the Committee has been on research which might eventually lead to a greater understanding of the health effects of agent orange exposure and how best to address the special needs of those veterans who may have been exposed to this herbicide.

CDC Epidemiological Studies.—In 1979, in response to concern expressed regarding delayed adverse health effects as a result of exposure to agent orange, Congress passed legislation—enacted in section 307 of Public Law 96-151—mandated that the VA conduct an epidemiological study of the health effects in Vietnam veterans of exposure to dioxin as found in herbicides used in Vietnam. The scope of that study was expanded—by section 401 of Public Law 97-72—to authorize the inclusion of an evaluation of the impact on the health of Vietnam veterans of other environmental factors which may have occurred in Vietnam—this is known as a "health experience" study. In 1983, the VA delegated to the CDC the responsibility for this study.

The CDC is conducting the epidemiological study of the health of Vietnam veterans in 3 components. As mandated by Public Law 96-151, the CDC's protocols for these studies were extensively reviewed in accordance with scientific peer-review criteria and were approved by the Office of Technology Assessment (OTA). In addition, these protocols were approved by the Science Panel of the Cabinet Council's Agent Orange Working Group (AOWG).

The first component, the Vietnam Experience Study (VES), is a three-part effort designed to demonstrate whether or not there is any difference in the health of veterans of the Vietnam era who served in Vietnam compared to the health of veterans who served elsewhere during the same period of time. The second component of the CDC effort, the Agent Orange Study, is designed to determine if there are any differences in the health of veterans who were exposed to that herbicide during service in Vietnam compared to the health of veterans who also served in Vietnam but who were not so exposed. The third component, the Selected Cancers Study, is designed to determine whether there is an increase among Vietnam veterans in the incidence of several serious, but relatively rare, cancers which have, in some studies, been suggested to be linked to dioxin exposure.

1. *Vietnam Experience Study (VES).*—The VES has three parts: a mortality study; detailed health interviews; and comprehensive medical, psychological, and laboratory evaluations of veterans. In January 1987, the CDC released the results from the first VES part—an analysis of postservice mortality of over 18,000 Vietnam era veterans. The CDC found an excess of deaths—primarily due to external causes such as motor vehicle accidents and suicides—in the first five years after service. However, after that period, except for drug-related deaths, the study found no increase in the death rate for Vietnam veterans as compared to their veteran counterparts who did not serve in Vietnam. The reports on the latter two phases of the VES study are scheduled to be published over a number of months beginning in early 1988.

2. *Agent Orange Study.*—The CDC's Agent Orange Study became stalled in January 1986 pending the outcome of efforts to determine if assumptions about a veteran's exposure to agent orange for purposes of assigning the veteran to a particular study cohort could be validated on the basis of a review of military records. In late 1986, the CDC refined a methodology for detecting residuals of dioxin in blood samples which, it was believed, could be used to validate a very intricate exposure-measuring methodology, developed by the Defense Department in consultation with CDC, based on military records. This blood-testing method of determining

dioxin exposure has also been validated and used successfully in other studies, including studies of civilians and Ranch Hand Air Force personnel with known exposures to dioxin.

The CDC serological study found that the military records methodology was not able to identify levels of exposure to agent orange epidemiological study.

Both the OTA nd the AOWG are currently evaluating the CDC findings. The OTA, at a meeting in August 1987 of its Agent Orange Panel, preliminarily indicated that the CDC blood dioxin study appears to have been properly conducted and to be scientifically valid.

The CDC and the AOWG are in the process of determining whether the Agent Orange Exposure Study, at least as originally envisioned, can be carried out, and the OTA will be reviewing their determinations. The Committee will be very closely monitoring these activities.

3. *Selected Cancer Study.*—The Selected Cancer Study is underway at this time. The CDC is still in the process of data collection, and results are expected in early 1989.

Ranch Hand Study. In 1979, the Air Force began an epidemiological study of Ranch Hand personnel, the former Air Force personnel who participated in the agent orange spraying missions in Vietnam, to determine whether these individuals suffered adverse health effects from herbicide exposure. In this study, the health of these personnel is being compared with that of counterparts who served in the Air Force in Vietnam and were not exposed to herbicides. Four mortality reports have been released thus far—the most recent in January 1987—and none have indicated excess morbidity among the Ranch Hand personnel as a group, although the Air Force cautions that it is much too early to draw any conclusions from these preliminary results. In October 1987, a summary of results from the First Followup Examinations of the Air Force Health Study was released. To date, according to the Air Force, none of these reports demonstrate any adverse health effects which can be conclusively attributed to dioxin exposure.

VA Mortality Study.—The VA recently completed a proportionate mortality study of Army and Marine Corps Vietnam veterans. The VA compared causes of death among 24,235 such veterans with such causes among 25,685 non-Vietnam veterans. The study found a statistically significant two-fold increase of non-Hodgkin's lymphoma (NHL) and a statistically significant 57 percent increase of lung cancer among the Marine Corps Vietnam veterans, who comprised approximately one-fifth of the study subjects. On the other hand, there was no increase in these causes of death among the Army veterans, who comprised about 80 percent of those studied. As to all cancers and as to deaths in general, there was no marked difference between causes of death among the Vietnam veterans as compared to the non-Vietnam veterans.

In this regard, the Committee has requested responses from the OTA, the AOWG, and the VA Advisory Committee on this study, with particular reference to whether it supports the suggestion in several studies of a link between NFL and dioxin exposure. Only the OTA has thus far responded. It has determined, in a October 23, 1987, letter, that, "[o]verall, the methodology of this study appears sound and appropriate . . ." and recommended that the VA carry out certain specific followup analyses.

The Committee believes that the VA needs to examine additional questions arising out of the study, including, for example, the health status of Army Vietnam veterans who served in "I" Corps, the area in Vietnam where the majority of the Marine veterans served. The Committee has requested an evaluation from the VA regarding further investigation of conditions in "I" Corps. The Committee understands that 2,250,430 gallons of agent orange were sprayed in I Corps as compared to 5,255,938 gallons in "III" Corps but that factors such as troop dispersion, location, and spray patterns must also be carefully considered in any subsequent analysis.

Non-Veteran Herbicide Studies.—In addition to studies of the effects of dioxin exposure on Vietnam veterans, other independent studies have examined the effects of herbicide exposure on agricultural, forestry, and industrial workers. Some of these studies have found some excesses of NHL among occupationally exposed workers. Studies conducted in Sweden by L. Hardell and others on the effect of years of occupational exposure to phenoxy herbicides, including in some cases compounds containing dioxin, have been inconsistent with respect to finding an association between such exposure and NHL. While certain of these studies have found significant increases in NHL, others have not found an increase. Some have found no link at all between NHL and herbicide exposure.

In September 1986, the results of a study entitled "Agricultural Herbicide Use and risk of Lymphoma and Soft-Tissue Sarcoma" ("Kansas Study"), conducted by the National Cancer Institute and the University of Kansas, were published. This study examined the effect of exposure to certain herbicides through agricultural use, including any relationship with NHL. The components of some of the herbicides were also present in agent orange, but the herbicides were almost exclusively *not* contaminated with dioxin.

The report of the Kansas Study found a significant increase of NHL among the agricultural workers. At the request of then-Committee Ranking Minority Member Cranston, the OTA and the AOWG reviewed this study. Both the OTA and the AOWG raised significant questions about the significance of the Kansas Study results as far as Vietnam veterans were concerned. Concerns were expressed regarding the small number of cases on which the NHL findings were based. More importantly, both reviews noted that almost all of the herbicide exposure evaluated in the study consisted of exposure to 2,4-dichlorophenoxyacetic acid (2,4-D), rather than to dioxin. Although 2,4-D is one of the components of agent orange, it does not persist in the environment and thus substantial exposure in Vietnam would have required either direct contact with agent orange or exposure very shortly after spraying. Accordingly, at OTA observed, few Vietnam veterans would have been exposed to 2,4-D, and the results of the Kansas Study do "not provide strong support for attributing the occurrence of non-Hodgkin's lymphomas in Vietnam veterans to agent orange".

The Chairman of the VA Advisory Committee on Environmental Hazards, Oliver Meadows, in a February 11, 1987, letter to Ranking Minority Member Murkowski stated:

> The Council believed that the study was well-designed and well-conducted. The Council expressed the general opinion that the study's findings, while not directly applicable due to the differences in method and duration of exposure, did have implications for Vietnam veterans. They did not believe that one study provided a sufficient foundation upon which to base firm conclusions. They expressed the opinion that a closer look must be given to the association in studies being conducted involving Vietnam veterans.

A recent study—entitled "Soft Tissue Sarcoma and Non-Hodgkins Lymphoma in Relation to Phenoxy Herbicide and Chlorinated Phenol Exposure in Western Washington" which was published in the May 1987 issue of the *Journal of the National Cancer Institute*—sought to "investigate the relationship between the incidence of soft tissue sarcomas and NHL and past exposure to phenoxy herbicide and chlorinated phenol using a population-based case-control approach." This study found "small but significantly increased risks for developing NHL in association with some occupational activities involving exposure to phenoxy herbicides, particularly for prolonged periods, and possibly, in combination with other chemicals." The study did not demonstrate "a positive association between increased cancer risks and exposure to any specific phenoxy herbicide product alone."

A second recent study—entitled "Soft Tissue Sarcoma and Military Service in Vietnam: A Case-control study", which was published in the October 1987 issue of the *Journal of the National Cancer Institute*—sought to "examine the association of soft tissue sarcomas (STSs) with military service in Vietnam as well as other host and environmental risk factors". This study found a small, not statistically significantly increase in risk of STS among subgoups of Vietnam veterans who had higher estimated opportunities for exposure to agent orange, and concluded that Vietnam veterans generally "did not have an increased risk of STS when compared to those men who had never been in Vietnam".

The Committee, together with its counterpart Committee in the House, has asked OTA, the AOWG, and the VA Advisory Group to review these two recent studies and provide views on them and their relevance to issues relating to Vietnam Veterans.

Committee bill

Against this background, and in order to pull together the various scientific studies, the Committee bill would provide for the NAS to undertake a review of all of the scientific evidence, literature, and studies pertaining to the adverse health effects in humans of exposure to agent orange and its component compounds, and issue a report by October 1988 summarizing the Academy's conclusions as to the weight of the evidence on this subject. Such sums as are necessary would be authorized to be appropriated, and, in order to satisfy section 401(a) of the Congressional Budget Act, the contract authority would be authorized only to such extent as is, or in such amounts as are, provided for in Appropriations Acts.

It is the Committee's hope that the Academy would be willing to undertake a scientific review and issue a report, as outlined above, which would provide an authoritative statement regarding the evidence pertaining to agent orange, and could help guide future public-policy decision making in this area.

Part C—Education Provision

Measurement of Laboratory Instruction

Section 121 of the Committee bill, which is derived from section 104 of S. 918, an Administration proposal, would amend section 1788 (a) and (c) of title 38 to change the standard for evaluating the training time of VA students enrolled in courses with laboratory instruction to require the VA to consider two 50-minute laboratory periods per week as the equivalent of one quarter or one semester hour or one standard class session.

Background

Current law (section 1788(a) and 1788(c)) requires a student enrolled in a course with laboratory instruction to attend two hours of laboratory instruction per week in order to obtain the training time equivalent of one quarter or one semester hour or one standard class session. In contrast, a student enrolled in academic instruction is required to attend only one 50-minute period per week in order to obtain the training time equivalent of one quarter or one semester hour or one standard class session.

Committee bill

The Committee bill would conform the training time measurement standard with the common academic practice of organizing classes (including laboratory periods) in 50-minute increments. The Committee believes that students receiving VA benefits should not generally have their training time, and hence their benefits, reduced because they attend a school which follows the usual and accepted practice of scheduling laboratory instruction in 50-minute increments.

Tolling of Delimiting Dates by Reason of Drug or Alcohol Conditions

Section 122 of the Committee bill, would amend chapters 30, 31, 32, 34, and 35 of title 38 to extend the delimiting periods in the cases of certain veterans and other eligible persons who have been prevented from using their education or rehabilitation entitlements under title 38 as a result of alcohol or drug dependence or abuse conditions.

Background

In the GI Bill Improvement Act of 1977 (Public Law 95–202, the Congress provided for the granting of extensions of the Vietnam-era GI Bill (Chapter 34) 10-year delimiting period veterans—and of the service-connected disabled veterans dependents education program (chapter 35) 10-year delimiting period for spouses or surviving spouses—who are prevented from pursuing a program of education during the delimiting period due to a mental or physical disability not the result of willful misconduct. Under that law, the delimiting period does not run during any period of time that the veteran or eligible spouse is determined to have been unable to pursue training because of the disability.

However, there have been a number of instances in which the VA has denied a delimiting-period extension to an otherwise eligible veteran under this authority on the grounds that the condition on which the veteran based his or her claim was an alcohol or drug abuse or addiction disability, which the VA considers categorically to be a condition due to willful misconduct. The VA has based its denial in these cases on the legislative history of the 1977 provision that addressed the issue of how determinations of disability should be made for the purposes of the extension. In particular, the report of the Veterans' Affairs Committee (S. Rept. No. 95-468) on the provision which was enacted as section 203(a)(1) of Public Law 95-202, in discussing the concept of "willful misconduct", stated at pages 69-70:

> In determining whether the disability sustained was a result of the veteran's own "willful misconduct", the Committee intends that the same standards be applied as are utilized in determining eligibility for other VA programs under title 38.

The report further referenced VA regulations and manual provisions relating to the determination of willful misconduct for the purposes of determining service-connected disability. Under the VA's interpretation of those standards (38 CFR section 3.301(C)(2) and (3)) alcoholism and drug addiction and injuries proximately and immediately resulting from the effects of the deliberate ingestion of an alcoholic beverage or voluntary use of a drug—such as an injury incurred in a traffic accident caused by the veteran's driving while under the influence of alcohol or a drug—are considered to be the result of willful misconduct.

In this regard, the Committee notes that, in two pending, companion Supreme Court cases—*Traynor* v. *Turnage*, 791 F.2d 226 (2d Cir. 1986), *cert. granted*, — U.S. —, 55 U.S.L.W. 3607 (1987), and *McKelvey* v. *Turnage*, 792 F.2d 194 (D.C. Cir. 1986), *cert. granted*, — U.S. —, 55 U.S.L.W. 3607 (1987)—the question has been raised whether the VA regulation violates section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which as amended in 1978 by Public Law 95-602, generally prohibits Federal agencies from discriminating against handicapped persons on basis of their handicap. The Committee has never addressed the issue of the validity of the willful misconduct regulation under section 504 with respect to alcoholism and drug addiction.

In 1979, the Veterans' Affairs Committee reexamined the practical consequences of denying a delimiting period extension in such cases and the differences between awarding such an extension on the grounds of alcohol or drug disabilities and awarding other VA benefits, such as compensation or pension, based on such disabilities. As a result of this reexamination, the Committee saw no substantial purpose to be served by denying a veteran a GI Bill delimiting-period extension when the veteran was prevented by a drug or alcohol disability, during part or all of the ordinary 10-year delimiting period, from using GI Bill educational assistance which would have considerable value to achieving and maintaining the medical, social, and economic rehabilitation of a veteran recovering from disabilities related to alcohol or drugs in addition to the educational benefit's primary purpose of assisting the veteran's readjustment to civilian life.

In contrast, the Committee noted that some undesirable consequences might flow from a similar rule being applied for purposes of other VA benefit programs, such as service-connected compensation, where eligibility for as well as the rate and duration of benefits depend directly upon the severity and duration of the disability. If an individual were to be granted disability compensation for alcoholism or drug addiction, there would be a strong financial incentive established—in the form of a higher rate of compensation or the continuation of receipt of compensation—toward the worsening or prolongation of the disability. Either of these factors are to some extent within the control of the veteran because they depend upon the amount, frequency, and duration of his or her consumption of alcoholic beverages or drugs.

Thus, the Committee reported in S. 870—and the Senate passed in section 201(2) of H.R. 5288—a provision to establish that an alcohol or drug dependence or abuse disability from which a veteran or eligible spouse has recovered shall not, solely for purposes of deciding requests for delimiting-period extensions, be considered to be the result of willful misconduct.

Similarly, in S. 1188, the bill reported by the Committee in 1980 to revise and update chapter 31, relating to VA rehabilitation programs for service-connected disabled veterans, the Senate passed on September 4, 1980, a comparable provision to provide for the tolling of a service-connected disabled veteran's delimiting period for a chapter 31 rehabilitation program on account of an alcohol or drug disability.

However, neither provision was accepted by the House.

In 1981, in connection with S. 921, the proposed "Veterans' Programs Extension and Improvement Act of 1981", the Senate again approved similar provisions, and again the House refused to accept them. In 1982, in S. 2913, the proposed "Veterans' Compensation, Education, and Employment Amendments of 1983", the Senate passed these provisions with revisions to address certain concerns expressed by the VA; again the House refused to accept the Senate provisions. Yet again in 1984, the Senate approved Committee-recommended provisions in S. 2736, largely similar to those approved in 1982, and the House refused to accept them.

The Committee believes both that the opportunity to use GI Bill and VA rehabilitation program benefits can be extremely important to the readjustment and rehabilitation of the Vietnam-era and service-connected disabled veterans involved and that the delimiting-period extensions for those who were, but are no longer, prevented by alcohol or drug disabilities from using those benefits would be fully consistent with the readjustment and rehabilitation goals of both programs.

The Committee also notes that in enacting major new drug and alcohol abuse legislation, the Anti-Drug Abuse Act of 1986, Public

Law 99-570, Congress recognized the importance of providing individuals who have, or have recovered from drug or alcohol conditions with every reasonable opportunity to participate in programs that can help them return to full, productive lives.

Committee bill

Thus, section 122 of the Committee bill contains provisions—largely identical to those in S. 2736 as passed by the Senate in the 98th Congress—that would amend chapters 31, 34, and 35 to permit the Administrator to extend delimiting periods in the cases of veterans and eligible persons who have been prevented from using their education or rehabilitation entitlements under title 38 as a result of alcohol or drug dependence or abuse conditions. However, the Committee bill would also amend for the purpose, the chapter 30 program, the "Montgomery GI Bill" (for All-Volunteer Force members who initially enter on active duty after June 30, 1985), and the chapter 32 program, the "Veterans' Educational Assistance Program" (for Post-Vietnam era veterans who enter on active duty before July 1, 1985).

In 1982, in view of certain concerns and objections raised by the VA about the implication of the provision insorfar as disability compensation is concered and about its ability to administer such provisions effectively, the Committee recast the provisions substantially. These provisions, which are contained in the Committee bill, are designated to reflect, even more clearly than the versions prior to 1982, the Committee's intention not to undercut, in any manner, any administrative directives or legislative provisions, relating to other benefit programs, expressly or implicitly to the effect that alcohol or drug abuse or dependence are the result of willful misconduct. Hence, the Committee bill would made clear that, for the purposes of determining eligibility for an extension of the applicable delimiting period, an alcohol or drug dependence or abuse condition would not be considered a "disability"; it would simply be considered as a "condition" that could have prevented a veteran or eligible person from pursuing a program of education or participating in a program of vocational rehabilitation.

Next, in recognition of the administrative difficulties that could arise from the enactment of the provisions, the Committee bill unlike the pre-1982 versions would not require that the veteran or eligible person be "recovered" from an alcohol or drug abuse or dependence condition, but rather than such a condition be under control to such an extent as to enable the individual to participate in an appropriate program. Further, it would facilitate in two ways the making of determinations as to whether the individual had actually suffered from such a condition: (1) by requiring that he or she must have received recognized treatment or participated in a program of rehabilitation for the condition, and (2) by authorizing the Administrator to prescribe regulations specifying what specific types of treatment would be recognized for this purpose and what forms of rehabilitation programs would be qualifying. Thus, the Administrator would have the authority to make reasonable determinations as to participation in which programs—such as those offered by Alcoholics Anonymous or other treatment source—would qualify an individual for eligibility under the tolling provisions.

Additionally, the provisions would limit the length of any extension period to the period to time equal to the length of time that the individual participated in a program of treatment or rehabilitation for the condition plus the period during which the individual was able to demonstrate to the satisfaction of the Administrator that the condition prevented pursuit of a program of education or rehabilitation. However, in no event, could the extension exced 4 years. Thus, the Committee bill would address concerns that an individual would be able to obtain an extremely long period of tolling the applicable delimiting period.

The Committee also notes that the amendments proposed by the Committee bill would make provision for the measurement of the extension period in a manner identical to that provided for extensions on account of disabilities under current law. That is, the delimiting period would again begin to run—after being tolled—on the first day on which the Administrator determines it is reasonably feasible for the individual to begin training.

In addition, under the amendments made by the Committee bill, the period of time for an individual to file an application under this authority for an extension of the delimiting period would be limited. Applications would be required to be filed within 1 year after whichever is the latest of the date on which the delimiting period would have otherwise expired, the date on which the last period of rehabilitation or treatment for the condition was terminated, or the date on which final regulations to implement the proposed extension authority are published.

Finally, as noted above, in a substantive change that has been made from the 1984 version, provisions for tolling the delimiting period for those who were incapacitated due to drug or alcohol conditions would be added to chapter 30 and chapter 32 as well.

The Committee bill does not contain the language included in the 1984 version which required that, in any case, including the case of a veteran who received a general discharge, in which the veteran received a discharge other than a honorable discharge, a determination as to whether the veteran was discharged under conditions other than dishonorable be made by the Administrator on the basis of a review of the veteran's service record.

Under current VA regulations (section 312(a) of title 38, Code of Federal Regulations), general discharges (which the Armed Services characterize as discharges under honorable conditions) are automatically accepted by the VA as being discharges under conditions other than dishonorable and, thus, as qualifying discharges for purposes of benefits under title 38. The Committee bill proposes no change in determining such eligibility in the case of tolling.

In sum, the Committee stresses that it believes that it is not necessary to resolve the issue of the relationship of alcohol and drug dependence or abuse conditions to compensation for disabilities in order to make this kind of an education or rehabilitation benefit extension available. Thus, the Committee is again proposing the enactment of this provision in a form that is designed as clearly as possible to avoid this issue and hence enhance the prospects for enactment of this legislation.

Authority to Waive Compliance Surveys

Section 123 of the Committee bill, which is derived from section 105 of S. 918, an Administration proposal, would give the Administrator, in the case of an institution having a demonstrated record of compliance with all of the applicable requirements for education programs under title 38, authority to waive the requirement for an annual compliance survey of each institution that offers courses in which 300 or more eligible veterans or persons are enrolled or which do not lead to a standard college degree.

Background

Section 1793 of title 38 requires the Administrator to conduct an annual compliance survey—to assure compliance with all applicable provisions of title 38—of each educational institution that offers one or more approved courses in which 300 or more eligible veterans or persons are enrolled or that offers courses which do not lead to a standard college degree.

Committee bill

The Committee bill would permit the VA to waive mandatory compliance surveys for schools with a good record of full compliance and thus give the Administrator greater authority to direct compliance surveys toward those institutions where the need is greatest. The Committee believes that the VA can maintain active and effective enforcement of the law and regulations without the need for annual compliance surveys of every institution covered by current law. The Committee does not intend the VA to reduce its emphasis on ensuring compliance with applicable provisions of title 38, but rather improve its compliance activities by directing them toward those institutions where the need is most apparent.

Effective Date of Awards Under the Post-Vietnam Era Veterans' Education Assistance Program

Section 124 of the Committee bill, which is derived from section 106 of S. 918, an Administration proposal, would amend present section 3013 of title 38 to require that the effective dates of awards of benefits under chapter 32 of title 38, the Post-Vietnam Era Education Assistance Program, commonly know as VEAP, correspond, to the extent feasible, with the effective dates of awards for VA disability compensation.

Background

In section 3013 of title 38, the Congress has established the policy that the effective dates of awards of VA educational benefits should, to the extent feasible, correspond to awards of disability compensation.

Committee bill

The Committee bill would extend the policy, which now applies to all other VA education programs, to VEAP. The Committee believes that, except as substantive reasons relating to the nature of the programs may indicate to the contrary, the policies governing the implementation of the various veterans' education programs should be consistent.

Repeal of Expired Program of Accelerated Payment Loans

Section 125 of the Committee bill, which is derived from section 201(b), (c), (e), and (f) of S. 918, an Administration proposal, would amend sections 1682A, 1686, 1737 and 1738 of title 38 to repeal the VA's authority to make education loans in the form of accelerated payment of educational assistance allowances.

Background

Current law provides the VA with the authority to make accelerated payments of educational assistance to veterans, contingent upon the veterans' State establishing, prior to November 24, 1982, a program to pay to the VA Education Loan Fund amounts matching the amount of accelerated VA payments to the veteran. Only one State authorized such a program and no State funds were ever appropriated to implement this program. Thus, the program was not utilized and has expired.

Committee bill

The Committee bill repeals the authority for these accelerated payment loans.

Part D—Insurance Provisions

Authority to Adjust Monthly Annuity Payments

Section 131 of the Committee bill, which is dervied from sections 101 and 102 of S. 1090, an Administration proposal, would amend subchapter I of chapter 19 of title 38 so as to authorize the VA to increase periodically the amount of monthly annuity payments to beneficiaries of National Service Life Insurance (NSLI), Veterans Special life Insuracne (VSLI), Veterans Reopened Insurance (VRI) and United States Life Government Insurance (USGLI) policies.

Background

Under current law, the proceeds of NSLI, VSLI, VRI, or USGLI policy may be paid in either a lump sum, a limited number of monthly installments, or a lifetime annuity under which monthly payments are made to the beneficiary. Gains on annuity reserves which are earned are currently credited to the general reserve of the insurance trust fund involved and paid to current policyholders in the form of dividends.

In the case of the NSLI program, as a result of interest earnings and mortality experience, the reserves held for annuity settlements are generating gains in excess of $33 million annually, and actuarial projections indicate that gains on annuity reserves will continue to accrue at a rate of least $26 million per year through 1989.

Committee bill

The Committee bill would allow the VA to adjust payments to annuitants by periodically increasing the dollar amount of monthly installments by a fixed percentage if the Administrator determines that the adjustments are administratively and actuarially sound. The VA would not be permitted to reduce annuity payments below the amounts which would be paid in accordance with the provisions of current law.

The Committee believes it is appropriate that life annuitants, as well as current policyholders, realize the gains resulting from interest rates higher than those specified in title 38.

Further, the Committee notes that, in response to a question submitted by Ranking Minority Member Murkowski in connection with the Committee's June 30 hearing, the VA stated that it would implement this authority so that payments under life annuity settlement options would be increased if it is actuarially determined that excess earnings are being generated by the reserves held for these annuitants, these excess earnings are expected to continue to be earned for a significant period of time, and the initial increase in payments for a group of annuitants would be significant enough to justify the start-up effort required. The VA also stated its expectation that the required level of increase initially would have to be at least 25 percent and that subsequent increases would need to be at least 10 percent in order to justify the cost of implementation. The Committee expects the VA to adhere to these policies.

Exemptions of Servicemen's and Veterans' Government Life Insurance Premium Payments From State Taxation

Section 132 of the Committee bill, which is derived from section 201 of S. 1090, an Administration proposal, would amend section 769 of title 38 to prohibit the states from imposing taxes on any premiums paid under a Serviceman's Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI) policy. SGLI was established in 1965 to help active duty servicemembers meet their life insurance needs, and VGLI was established in 1974 to make 5-year, non-renewable term insurance available to recently discharged veterans. Current law relating to the payment of SGLI and VGLI premiums, section 769 of title 38, contains no prohibition against the States imposing taxes on SGLI or VGLI premiums. The Prudential Insurance Company of America, with which the VA has contracted for the provision and administration of these policies, is responsible for paying such taxes.

Both of these group insurance plans are self-supporting in that the insureds' premiums pay all costs of providing the insurance, including administrative expenses and taxes. However, the Federal government does pay (under section 768(b)) any additional SGLI premiums necessary to cover costs traceable to extra hazards of military service and, under section 777(g), additional VGLI premiums for the costs of insuring veterans who, due to service-connected disability, do not meet the good health requirements for this insurance. In recent years, there have been neither kind of additional costs. Since the inception of both programs, the insureds have paid over $50.8 million in State premium taxes. Approximately $2.54 million was paid in the policy year ending June 30, 1986.

In section 405 of the Omnibus Reconciliation Act of 1980 (Public Law 96-499), Congress enacted section 8714(c) of title 5 to provide insured persons under the civilian counterpart of the SGLI and

VGLI programs, the Federal Employees' Group Life Insurance (FEGLI) program, with an exemption from the payment of State premium taxes. The Committee believes it is clearly appropriate, as a matter of equity, to provide a simlar tax exemption for SGLI/VGLI based on the similarities between both the objectives and structure of FEGLI on the one hand and of SGLI/VGLI on the other hand.

In the FEGLI program, the Office of Personnel Management makes group life insurance available to both present and retired Federal employees under a policy of insurance obtained from a commercial life insurance company. Under the terms of the FEGLI program, as under the SGLI/VGLI program, the private insurer has the responsibility to (1) settle and pay claims; (2) contract for and administer reinsurance contracts with other insurers in the programs; (3) participate with other insurance carriers in maintaining a conversion pool to cover individuals separated from Federal service who wish to convert their coverage to private insurance; and (4) maintain a contingency reserve for future adverse fluctuations in charges. Other similarities in the programs include the automatic coverage provided to most insureds, the Government's collection of premiums by deduction from the individual insured's salary, and the Government's maintenance of records detailing an individual's insurance status while in the military or employed by the Federal Government.

In view of such similarities in the programs and the fact that FEGLI has been specifically exempted from State premium taxation, the Committee bill would make SGLI/VGLI premiums similarly exempt. As in the FEGLI program (under section 8714(c)(2) of title 5), the proposed tax exemption would not apply to a tax on the net income or profit accruing to or realized by an insurance company from business conducted under the SGLI or VGLI program if the tax, fee, or payment is applicable to a broad range of business activity.

Direct Administration of Veterans' Mortgage Life Insurance

Section 133 of the Committee bill, which is derived from section 301 of S. 1090, an Administration proposal, would amend section 806 of title 38 to authorize the VA to administer directly the Veterans' Mortgage Life Insurance (VMLI) program.

Background

Current law authorizes the VA to purchase group mortgage life insurance on behalf of service-disabled veterans who have received specially-adapted housing assistance (described in the discussion of section 102, above). This mortgage life insurance ensures that, in the event of the veteran's death, funds to pay the outstanding balance of a mortgage on the specially-adapted home will be available to the veteran's survivors.

Committee bill

As introduced, section 301 of S. 1090 would have required the VA to terminate the contract under which a private firm provides this insurance and undertake direct administration of VMLI. According to the VA, direct administration would produce estimated savings of over $75,000 in fiscal year 1988, rising to over $86,000 in fiscal year 1992. In lieu of the Administration proposal that direct administration be mandated, the Committee bill would provide the VA with the option of administering the VMLI program either directly or by contract. In the event that the VA changes to direct administration and its estimate that that approach is less costly should turn out to have been erroneous, the agency would have the flexibility to revert to a contract. Thus, the Committee bill would provide the VA with the on-going ability to administer the program in the most cost-effective manner.

Part E—Pension Provision

Exclusion of Casualty Loss Reimbursement From Income Computation

Section 141 of the Committee bill, which is derived from section 202 of S. 940, an Administration proposal, would amend section 503(a)(5) of title 38 to exclude reimbursement from any source for property loss from the beneficiary's income used by the VA for purposes of determining eligibility for, and rates of, pension and parents' DIC.

Background

Under current law, the VA, in determining income for purposes of pension and parents' DIC, must include all payments of any kind or from any source unless the payment is specifically excluded by law. Current law specifically excludes the proceeds of fire insurance policies, but includes all other reimbursements for property loss.

Committee bill

The Committee bill would expand the fire insurance exclusion to encompass all forms of reimbursement for property loss. The amount excluded would be limited to the fair market value or reasonable replacement value, whichever is greater, of the property immediately preceeding the loss.

In S. 940 as introduced, the proposed exclusion was limited to the fair market value of the property. The Committee revised this provision to permit the exclusion to be in the amount of the reasonable replacement value of the property where that is a greater amount than fair market value and thus more accurately reflects the economic burden of the loss.

The Committee believes that the proceeds of insurance or other reimbursement for property loss should not be considered income but rather the involuntary conversion of an asset (the property) into another form (reimbursement). In such a case, the recipient has not improved his or her net material condition. The Committee believes it is appropriate to apply this principle, now limited to fire insurance, to all forms of reimbursement for all casualty property loss.

TITLE II—VETERANS' RADIATION EXPOSURE

Title II of the Committee bill, which is derived from S. 1002 as introduced, would provide, in a new chapter 12 of title 38, for the payment of a benefit at a rate equal to 100 percent of the disability compensation payable for the percentage of disability involved for a veteran who was exposed to radiation in connection with the atmospheric nuclear weapons testing program or the American occupation of Hiroshima or Nagasaki, Japan, and who (1) has leukemia (except for chronic lymphocytic leukemia) or thyroid cancer, or (2) if exposed to more than 1 rem of radiation, has cancer of the small intestine, stomach, liver (except where cirrhosis or hepatitis B is indicated), bile ducts, gallbladder, and pancreas, lymphomas (excluding Hodgkin's disease), and multiple myeloma. Veterans exposed to radiation who are suffering from certain other cancers—cancer of the colon, lung, esophagus, rectum, pharynx, liver (when cirrhosis or hepatitis B is indicated), kidney, urinary tract, bladder, brain and nervous system, salivary glands, and bones and joints, and cutaneous melanoma—would qualify for special consideration of claims for benefits which would include the Administrator's giving conclusive weight to the Congressional findings relating to the relationship between the particular disease, its susceptibility to radiation exposure, and its link to other significant risk factors. In addition, the radiation exposure estimates prepared by the Defense Nuclear agency would be upwardly adjusted by a formula based on the estimated radiation exposure for all the participants in a nuclear weapons testing operation. The deadline for applications for benefits under these provisions would be September 30, 1991. Eligibility for VA health-care for radiation-exposed veterans would be extended to September 30, 1991. The VA Advisory Committee on Environmental Hazards would be required to submit its reports to the Committees on Veterans' Affairs of the Senate and the House of Representatives, in addition to the VA.

Background

Nuclear Weapons Tests.—Beginning in 1945 and continuing until the Limited Test Ban Treaty in 1963, the United States detonated 235 nuclear devices in connection with its atmospheric and underwater nuclear weapons testing program. The Department of Defense (DOD) estimates that approximately 200,000 military service personnel participated in the tests. In addition, approximately 25,000 service personnel were attached to the United States occupation forces in Hiroshima and Nagasaki, Japan, following the detonation of atomic bombs over those two cities on August 6, and August 9, 1945, respectively, and thousands more personnel passed through those two cities in the months following the detonations.

In general, the DOD estimates—based on studies by Reynolds Electrical & Engineering Co., a DOD contractor—that the average recorded exposure of these troops to radiation generated by a nuclear device to be approximately one-half rem. (A "rem", an abbreviation for "roentgen equivalent man", is a unit of radiation exposure measurement which reflects the amount of biological effect done by a particular form of radiation.)

However, the DOD radiation dose estimates have been sharply criticized as underestimates in recent years. Film badges and dosimeters that were intended to monitor individual exposures were often provided to only one individual in a unit rather than to each individual. In addition, as is discussed below (under "GAO Reports"), variations in the accuracy of monitoring techniques are known to have existed, and some types of radiation and some forms of exposure—such as ingestion or inhalation of irradiated particles—were not measured at all.

The Committee notes that, although the nuclear weapons tests were conducted during a period of great international tension in which national security considerations were of paramount importance, a review of historical documents concerning the testing program reveals that considerable controversy existed, preceding the conduct of most of the tests, about the safety standards for human exposure to radiation, and that a considerable amount of information about that controversy was withheld from test participants until recent years. As early as 1945, according to the papers of Dr. Stanford Warren, the radiological safety officer at Operation Crossroads, the Government was aware of possible adverse health effects as a result of radiation exposure. However, with respect to the participation of troops in the weapons tests, the expert view that prevailed at that time tended to minimize the risk of disability resulting from low levels of radiation. Today, scientists are in general agreement that there is no completely safe level of exposure to radiation and, by today's standards safety precautions at those tests were not adequate. In addition, no systematic health followup of those radiation-exposed veterans was never undertaken by the U.S. Government.

Committee Activities.—The concerns and problems facing veterans who were exposed to ionizing radiation while in the service of our country through the nuclear test program or the American occupation of Japan have long been of great importance to the Committee. It is the Committee's view that these concerns fall into three general categories: Compensation for disabilities possibly related to exposure; answers to questions about the actual effects of exposure to low-level ionizing radiation; and, finally, access to health care for current problems that might be related to the exposure. The Committee has taken a variety of actions to address these concerns, including conducting four oversight hearings, debating possible solutions, and, in some instances, reporting legislation—which has later been enacted into law—designed to address these concerns, and maintaining active oversight of the efforts of the VA, the DOD, and other government agencies relating to the concerns of these veterans and their dependents and survivors.

1. *Committee hearings.*—The Committee has held four major oversight hearings on issues related to the concerns of veterans exposed to radiation during their military service.

The first of these hearings—the first in the Congress expressly on the subject of veteran's exposure to radiation—was held on June 20, 1979, and included as witnesses veterans exposed to radiation during their service, survivors of such veterans, and representatives of veterans' service organizations who had personal experience with handling claims from veterans and survivors based on such exposure, as well as representatives from the DOD's Defense Nuclear Agency (DNA), the VA, the Department of Energy, the Interagency Task Force on Ionizing Radiation chaired by the Department of Health, Education, and Welfare, the Centers for Disease Control, and the National Academy of Sciences.

The focus of the 1979 hearing was to gather information about the difficulties experienced by veterans and survivors in using the then-current VA adjudication system for radiation exposure-related claims. The most important outcomes of the hearing, which are described in greater detail in the Committee's report accompanying S. 689 in the 96th Congress, S. Rept. No. 96-260 (pages 34-36), included:

> the VA's agreement to issue agency-wide instructions establishing certain presumptions on test participation and directing that credible estimates of radiation exposure—even if higher than actual badge or dosimeter readings—be used in adjudicating claims;
>
> the VA's agreement to develop, in collaboration with other appropriate Federal departments and agencies, generally accepted medical principles concerning radiation-related illnesses as well as an enumeration of areas were uncertainties exist about that knowledge;
>
> the DOD's announcement that geographic reconstructions would be used in its development of radiation exposure estimates for test participants;
>
> the DOD's agreement to make publicly available, through declassification if necessary, any document or section of a document related to personnel participation or radiation exposure during the tests that would not jeopardize national security by its release and to make publicly available, and keep updated, a list of such documents; and
>
> the agreement of the VA and the DOD, in a memorandum of understanding signed on June 15, 1979, and clarified during the Committee's hearing—to work closely to assist claimants in gathering information in support of claims and to provide timely reconstructions, as requested by claimants, with respect to the participation and exposure to radiation during the tests of individual veterans.

The second such oversight hearing took place on April 6, 1983, and included the same general range of witnesses. During that hearing, the Committee members sought to evaluate the efforts of the VA and DOD to implement the agreements from the 1979 hearing. In addition, the Committee members focused on the VA's overall claims adjudication system and on the status of governmental efforts to learn more about the health of veterans exposed to radiation. Subsequent to this hearing, in November 1983, and in follow-up to concerns raised at that hearing that more needed to be done to evaluate the current health status of veterans exposed to radiation, section 601 of Public Law 98-160 (discussed below) was enacted, which directed the Administrator of Veterans' Affairs to carry out epidemiological study of veterans exposed to radiation unless the Administrator determines that it is not feasible to conduct scientifically valid study of this population.

The third and fourth oversight hearings were held in late 1985. In addition to witnesses similar to those who testified at the prior two hearings, these hearings included as witnesses two members of Congress and representatives of the General Accounting Office (GAO). The third hearing, held on November 14, 1985, focused principally on the VA's efforts to carry out the mandate of Public Law 98-542, which required the VA to establish uniform guidelines for adjudicating claims for VA benefits based on exposure to radiation. The fourth hearing, held on December 11, centered on the GAO's report on issues relating to Operation Crossroads, the first post-World War II test of nuclear weapons.

2. *Health care.*—In 1981, the Congress enacted legislation—Public Law 97-72—to expand eligibility for VA health-care services to veterans exposed to radiation from their participation in the nuclear weapons testing program or the American occupation of Japan. Public Law 97-72 also made VA health care available to veterans exposed to agent orange in Vietnam, on similar conditions as for radiation exposure. The practical effect of the enactment of this provision was to provide veterans suffering from disabilities that they believe may be linked to their exposure to radiation—but as to which there is insufficient medical evidence at the time they apply for care for such disabilities to establish this linkage—with eligibility to receive basic VA health-care services for those disabilities without having to establish that they are unable to defray the cost of the care needed as section 610 of title 38 otherwise would require.

The health-care services for which eligibility was provided includedd inpatient care in VA facilities for the disability in question and outpatient or ambulatory care in VA facilities for the disability on a pre- or post-hospitalization basis or as necessary to obviate the need for such hospitalization. Providing this health-care eligibility, in addition to its direct value as a benefit, also demonstrated to radiation-exposed veterans the Congress' commitment to provide concrete assistance to these veterans who are suffering health problems that may eventually be found to be related to their service while the efforts to determine if the disabilities are actually or probably so related go forward.

The provision that provided eligibility for health care was worded in such a way as to indicate that the information needed finally to resolve questions of service connection is not and may not ever be available in may cases—"notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such exposure".

Public Law 97-72 established health-care eligibility for all disabilities except those that are determined to result from some cause other than the exposure in question. The VA's Chief Medical Director was required to issue guidelines pursuant to which a disability may be found by an examining physician to have resulted from a cause other than the radiation exposure.

The Congress was satisfied that, as to some disabilities, such as traumatic injuries and infectioous diseases—influenza, for example—valid medical judgments can be made that a particular disability is the result of a specific cause other than the exposure. In recognition of the scientific uncertainties regarding precise correlations between specific amounts of radiation exposure and the induction of various types of cancer in a given individual, however, the legislative language puts the burden on the VA to establish that a disability was not caused by radiation exposure, instead of placing it on the veteran to show that the disability was caused by radiation exposure.

Unfortunately, the VA initally elected to construe this authority very narrowly, listing diseases that were eligible for treatment, rather than those as to which there was no eligibility. It was not until April 1983-17 months after the law was enacted and on the eve of the Committee's oversight hearing, discussed above—that the agency advised the Committee that it was amending the implementing regulations so as "to allow treatment of all health conditions except for those known to have causes other than radiation exposure", the standard articulated in the underlying law.

As originally enacted, Public Law 97-72 provided health-care eligibility for a limited period ending 1 year following the VA's first submission providing results on the epidemiological study regarding veterans exposed to Agent Orange that was mandated by Public Law 96-151. These health-care benefits were "sunsetted"—like the health-care benefits provided for veterans exposed to Agent Orange—in order to provide interim relief pending the results of on-going scientific research pertinent to the service-connection of the disabilities in question.

The Administrator was required to submit the first report on the Public Law 96-151 Agent Orange-exposure epidemiological study of Vietnam veterans not later than 24 months after the study protocol was approved, an event which occurred on February 14, 1984. Thus, the first report on the study was due by February 14, 1986, and the health-care eligibility was scheduled to expire on February 14, 1987. When it later became clear that the major studies—the Public Law 96-151 study on Agent Orange and study mandated by Public Law 98-160 relating to radiation exposure—designed to yield the information necessary to make final decisions about eligibility for VA benefits, including health care, for veterans exposed to dioxin or radiation would not be sufficiently advanced by 1987, the Congress, in 1985, passed legislation, ultimately enacted as Public Law 99-166, extending the health-care eligibility until September 30, 1989.

Finally, in 1986, as part of general changes in the law relating to access to VA health care made by the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, this health-care eligibility was changed to direct, rather than merely permit, the VA to furnish hospital care to both categories of veterans.

3. *Epidemiological research.*—In 1983, legislation was enacted—section 601 of Public Law 98-160—to require the VA to contract with an outside entity to conduct an epidemiological study or studies, except to the extend determined to be scientifically not feasible, of veterans exposed in service to radiation from nuclear detonations.

This provision was developed following the Committee's April 1983 hearing during which it was most evident that two important issues remained unresolved: First, exposure information on the veterans was very incomplete and, second, insufficient information was available regarding the health effects in humans of exposure to low-level ionizing radiation, the so-called "dose-response relationship".

Under the Public Law 98-160 study mandate, the VA required to contract with an outside entity for the study's design and conduct. In mandating this study, the Committee noted the growing body of information—mostly from followup studies of the health histories of the Japanese who were exposed at Hiroshima and Nagasaki—about the health effects of radiation exposure caused by nuclear detonation (S. Rept. No. 98-145, page 69). However, the Committee was concerned "that the health status of service members potentially exposed to low levels of ionizing radiation from nuclear detonations has not been studied directly, and remains unknown." (S. Rept. No. 98-145, page 69)

It was the Committee's belief that one comprehensive, scientifically-valid epidemiological study could help supply part of the missing information—namely, data as to the current health status of the veterans who were present at the Pacific and Nevada test sites and in Hiroshima and Nagasaki compared to that of persons not exposed to radiation from nuclear weapons. The Committee recognized that until such information is available or until there are more complete answers to the questions about the level of the veterans' exposure and the effects of such exposure, many of these veterans and their survivors, as well as many in Congress, will understandably continue to believe that these veterans and survivors are not receiving appropriate treatment from the VA and the Federal Government in general.

Finally, because concerns were raised about the question of scientific feasibility in terms of aspects of the study, the law provided that if the Administrator, in consultation with the Director of the Office of Technology Assessement (OTA), determined that all or any portion of the study mandate were not scientifically feasible, the Adminstrator would be required to notify the appropriate committees of the Congress promptly of that determination and of the reasons for it, and so much of the study as the Administrator so determined not to be scientifically feasible to conduct would not be required to be carried out. Within 60 days thereafter, the Director of OTA would report to the congressional committees on the Director's evaluation of the Administrator's determination and provide the OTA's opinion on any determination or determinations of scientific invalidity made by the Administrator.

Unfortunately, after extensive review of a proposed protocol for conducting a broad-based, morbidity study of veterans exposed to radiation by Executive Branch entities responsible for reviewing proposed research relating to radiation—the Interagency Radiation Research Committee and its successor, the Committee on Interagency Radiation Research and Policy Coordination—the Administrator reported to the Committee in a February 12, 1986, letter that it had been concluded that it was "unlikely that new or useful information regarding health effects of radiation could be obtained from an epidemiologic study of veterans exposed to radiation during duty in Japan or at nuclear weapons tests." The Director of OTA agreed with this conclusion and, in a July 8, 1985, letter to the Committee, stated:

> The adverse health effects that would be expected in the atomic veterans, even if radiation doses were underestimated by several-fold, would be undetectable in the proposed epidemiologic study.
>
> OTA also considered alternative strategies for studying the health of atomic veterans, and we have come to the conclusion that it does not appear possible to design a study of all atomic veterans, or of a subgroup known to have had higher radiation doses, that would have adequate power for detecting radiation-related excesses of disease.

In light of its view on the feasibility of an overall morbidity (health effects) study of these veterans, OTA proposed two possible alternative studies on mortality, each focusing only on a portion of the total population of exposed veterans. One of these would be a mortality study of participants in the atomic weapons test known as "Shot Smoky" and the other of the participants in Operation Crossroads. Because the Medical Follow-Up Agency of the National Research Council completed a study which included Shot Smoky veterans in 1985, the VA has deferred proceeding with that study but has indicated its intention to do so in the future. With reference to their Operation Crossroads study, the VA has contracted with the National Academy of Sciences to carry out such a study which is now in the early stages.

The Committee notes that more than 41 years after the first test operation—during which time only a handful of veterans have been awarded VA compensation for disabilities claimed on the basis of radiation exposure—it appears unlikely that a comprehensive epidemiological study of radiation-exposed veterans ever will be conducted.

4. *Compensation regulations.*—Public Law 98-542, enacted in october 1984, attempted to address the issue of compensation for disabilities that might have resulted from exposure to radiation. (A parallel provision in the law dealt with compensation for possibly Agent Orange-related disabilities.) That law directed the VA, through a rulemaking process allowing for public participation, to develop binding regulations for the adjudication of claims based on exposure to radiation in order to bring about consisteny in the process and the results. In developing the regulations, the Administrator was required to address specifically whether—based on medical and scientific evidence and resolving reasonable doubt in the claimant's favor—any presumptions as to service connection should be applied in the case of certain specified disabilities. The disabilities specified in the law in the case of veterans exposed to radiation are certain cancers (most types of leukemia, malignancies of the thyroid, female breasts, lung, bone, liver, and skin) and polycysthemia vera. These diseases were selected based on scientific information available at the time of the enactment of the law, which supported a possible connection between radiation exposure and the disease.

In addition to requiring the Administrator to determine which of the diseases specifically listed would have presumptions of service connection established for them, the law included a provision for the Administrator, during the initial rulemaking process and as the science moves forward over the years—again, by regulation and based on medical and scientific evidence and resolving doubt in the claimant's favor—to add presumptions and standards, criteria, and guidelines relating to additional diseases with reference to radiation exposure.

The Committee and the Congress approached the compensation issue in Public Law 98-542 by addressing the process by which the VA handles claims for veterans rather than by enacting a law designating specific diseases or disabilities as being presumptively service connected for VA compensation purposes—as the Committee bill would do at this time—for two basic reasons. First, it was believed that there was room for significant improvement in the way in which the VA compensation system handled claims based on radiation exposure and that such changes might obviate the need for legislation providing for presumptive compensation. Second, there was a concern at that time that any approach requiring Congress to make decisions to include or not include in a list of presumptively service-connected disabilities various disabilities as to which there were fundamental differences of opinion among informed scientists was fraught with many difficulties and confronted the Congress with the task of making decisons that it was not well-equipped to make, particularly when there was still an opportunity for further information on the health-status of veterans exposed to radiation to become available through the epidemiological study mandated by Public Law 98-160.

The most important change needed in the compensation system identified by the Congress at the time that that legislation was under consideration was for the VA to make clear, rational, on-the-record determinations, regarding the procedures and standards for handling radiation claims and to ensure that a consistent approach would be followed throughout the VA—that is, at the 58 VA regional offices with their over 100 different rating boards, by the Department of Veterans Benefits in Washignton, and by the VA's Board of Veterans' Appeals. The Committee believed at the time the legislation was under consideration, and continues to believe, that the public—including, of course, those most directly affected, the veterans with claims for compensation based on exposure to agent orange or radiation and their survivors—should have a full opportunity to participate in the process of deciding how those claims should be handled and resolved. Public Law 98-542 was designed to help remedy the significant lack of clear direction throughout the VA system on the resolution of agent orange and radiation claims.

The VA completed the process of developing and issuing the initial regulations required by Public Law 98-542 with the publication of final regulations on August 20, 1985. Although these regulations set forth a process for the adjudication of claims based on radiation exposure, the VA elected not to provide compensation on a presumptive basis for any of the cancers listed in that law. Thus, while that law led to some general improvements in the way in which radiation claims are handled by the VA, it did nothing to provide relief in the form of compensation for any veterans or survivors.

Public Law 98-542 also established the Veterans' Advisory Committee on Environmental Hazards (Advisory Committee), to evaluate scientific studies relating to the possible adverse health effects of exposure to ionizing radiation—and dioxin—and to submit to the Administrator periodic reports on such evaluations. The Advisory Committee has met 6 times since its inception in 1984, and has issued 6 reports. It has never recommended presumptively service connecting and diseases on the basis of radiation exposure although it has recommended that the VA add diseases to its regulatory list (discussed above).

5. *GAO Reports.*—In November 1985, the GAO issued a report—"Operation Crossroads: Personnel Radiation Exposure Estimates Should Be Improved" (GAO/RCED-86-15)—on its 16-month investigation into the safety precautions during and the extent of radiation exposure received by veterans who participated in Operation Crossroads. Operation Crossroads was the first post-World War II nuclear weapons test which consisted of two detonations—Test Able, a air detonation, on July 1, 1946, and Test Baker, an underwater detonation, on July 25, 1946. This investigation was requested by then-Committee Ranking Minority Member Cranston after information came to light disclosing that safety precautions had been inadequate and radiation exposure underestimated.

This report, although it does not purport to establish or estimate any specific exposure levels for veterans who were present at Operation Crossroads, casts significant doubt on the assertions by the Defense Department that the only exposures were to low-interest radiation. GAO officials estimated that a substantial number of the 42,000 Crossroads participants—as many as approximately 17,000—probably received heavier radiation dosages than previously assumed. The GAO report concluded that the highest risk for exposure was among military personnel who tried to decontaminate the target ships following Test Baker, along with personnel who retrieved those ships and crews who boarded submarines which had resurfaced through the highly radioactive water. In fact, about 70 of the 80 Test Baker target ships which service personnel attempted to decontaminate shortly after the detonation were eventually sunk "because they were not considered fit for continued use or decontamination proved unsuccessful".

Among the most significant findings of the GAO's review were that:

(1) Only 6,300 of the participants in the Operation Crossroads test series—15% of the total—wore film badges designed to detect radiation exposure; the badges were not worn throughout the entire course of the operation; and the DNA's radiation exposure estimates "made no allowance for inaccuracies" in the film or its processing. The GAO noted that, although the "DNA acknowledges that the recorded film badge readings would have an overall inaccuracy of approximately 30%", tests by the National Bureau of Standards suggest that actual exposure could have been twice the amount indicated on the badges.

(2) The DNA's estimate of radiation exposure did not take into account the extent to which "personnel may have retained radioactivity on their bodies and clothes" as a result of lack or violation of comprehensive decontamination procedures. The GAO pointed out,

for example, that the earliest evidence it found that military personnel were being required to shower or change clothes after returning from contaminated target ships "was in procedures issued on July 31, six days after the second detonation". Moreover, even after comprehensive decontamination guidelines were issued, the GAO found that "some violations were reported. Thus, Crossroads participants were probably exposed to more radiation than accounted for by DNA."

(3) The DNA study did not adequately measure internal radiation exposure. For example, it may have underestimated "by a factor of from 5 to 10" the exposure to alpha rays from inhaling radioactive materials, according to the GAO. The DNA also did not consider the possibility of radiation exposure from ingestion and open wounds. The DNA, according to GAO, "believed, incorrectly, a prohibition against food consumption aboard target ships effectively precluded ingestion". Additionally, DNA "did not know how to calculate for open wounds".

Although the DNA challenged the GAO report on many accounts, the VA, in comments to the GAO on the Operation Crossroads draft report, ageed that it

> . . . does appear that service personnel were exposed to more radiation during the course of Operation Crossroads and the subsequent cleanup than they would have been after safety precautions were better developed and used as in later trials. While GAO recommends revised methods of calculating radiation exposure levels for Crossroads participants, it appesrs that this new methodology should also be applied to participants in all atmospheric nuclear tests.
>
> These new calculations would almost certainly result in reports of higher levels of radiation exposure and could require reevaluation of previously denied claims. In this regard, it is imperative that any dose assessment calculated under the new methodology be reported to the VA if dose information had previously been reported in connection with a claim for veterans' benefits.
>
> All previously denied claims for which a new radiation exposure estimate becomes available would have to be reconsidered on the basis of new and material evidence. . . .

Shortly after the release of the Operation Crossroads report, allegations arose that the radiation exposure of certain Air Force veterans who flew through the mushroom clouds which followed certain nuclear detonations in 1956 in Operation Redwing significantly understated actual exposure. Accordingly, in order to see if safety precautions had improved after Operation Crossroads and to study the precise questions raised about Operation Redwing, the Committee requested that the GAO investigate this issue as well as any other issues that arose in the course of investigation with respect to manned planes flying through post-detonation nuclear clouds. Specifically, the GAO was asked to provide its views on the extent of exposure to radiation experienced by the operation Redwing plane and plane maintenance crews, and to perform the same analysis on two other atmospheric nuclear test operations.

The GAO completed the report on this second investigation—Nuclear Health and Safety: Radiation Exposures for Some Cloud-Sampling Personnel Need to Be Reexamined (GAO/RCED-87-134)—in September 1987. However, preliminary results from the investigation were made available to Chairman Cranston in the spring of 1987 before the introduction of S. 1002. These results basically confirmed the findings in the operation Crossroads report. The GAO studied the nuclear cloud-sampling activities at the Tumbler-Snapper (1952), Redwing (1956), and Dominic I (1962) nuclear test operations, and found various errors in DNA reporting of radiation exposure levels of approximately 900 Air Force personnel involved in nuclear cloud sampling work during the three operations and that the DNA had in certain cases significantly understated the radiation exposure levels for these personnel. According to the GAO, the amount of underestimate varied from individual to individual but inaccurate recording may have resulted, in some cases, in a 100-percent misreporting of an individual's exposure.

The GAO based these recent findings primarily on a review of film badges and film badge exposure records, and readings of other radiation monitoring devices used in the aircraft.

Among other discrepancies found in film badge accuracy, the report states that for exposures of 10 to 15 rems, film components in the Operation Redwing-type badge were able to distinguish radiation only to an accuracy level of plus 40 to minus 20 percent. This discrepancy means that if the film were exposed to 10 rems of radiation the film components could have interpreted the exposure as being anywhere between 8 and 14 rems.

The GAO found that accurate, cumulative records of radiation exposure were not kept—for Operation Redwing, 26 percent of the cumulative exposure records contained errors. For Operation Tumbler-Snapper, the cumulative exposure records have been lost or destroyed.

The report also found that for two of the three operations, monitoring devices in the aircraft recorded higher levels of radiation than the film badges. At Operation Dominic I, for example, at 11 of the 29 nuclear tests, according to the GAO, the integron (a device positioned in the cockpit of cloud-sampling aircraft to provide an immediate measure of gamma radiation) read on the average at least 1½ times higher than the film badges worn by the aircraft crew.

The GAO also found that safety precautions varied among the 3 operations but did improve in the later operations.

In light of the numerous recording errors it found, the GAO recommended that the Secretary of Defense direct the DNA to review the film badge exposure record of each Air Force individual who participated in any of the other atmospheric nuclear weapons tests.

Also, just as was found in the Operation Crossroads study, this report states that it is "generally recognized" that some test participants may have been subjected to internal radiation exposure—which was not measurable by any of the radiation monitoring devices used at the test sites. Specifically, the GAO found that testing personnel may have been exposed to internal radiation through inhalation, ingestion, cuts, or open wounds. On this point, the GAO recommended that the DNA reexamine internal exposure levels of the cloud-sampling personnel who particiapted in an atmospheric nuclear test.

Committee bill

Previously, the Committee had not acted on legislation to provide presumptive compensation—that is, to make decisions regarding the relationship between relatively low levels of ionizing radiation exposure and the diseases of the various body organs and tissues when the scientists could not. That was one of the reasons for the enactment of section 601 of Public Law 98-160, discussed above, which mandated epidemiological study of the long-term health effects of exposure to ionizing radiation on those veterans who participated in the nuclear weapons testing program or the American occupation of Hiroshima or Nagasaki, Japan, and for the enactment of Public Law 98-542.

However, after more than 3 years of evaluation, the scientists now have indicated that it is not scientifically feasible to design a morbidity study of those radiation-exposed veterans and the only study now under consideration is a mortality study involving only one series of detonations.

Additionally, the Committee believes that the GAO reports have seriously undermined repeated categorical assurances from the Executive Branch based on DNA's exposure estimates that there was generally no significant exposure to radiation among the veterans who participated in the nuclear weapons testing program or the American occupation of Japan.

In the Committee's view, the two GAO reports taken together provide confirmation of the contention that inadequate safety precautions were taken by the U.S. Government to protect the health of nuclear test participants, that the estimates of radiation exposure by the Government for participants have been substantially understated, and that it is no longer appropriate to place sole reliance on such estimates in the VA benefits claims adjudication process.

From certain documents that have come to light in the last several years, it is now clear that some officials of the United States Government were aware as early as 1945 of the risks of long-term, adverse health effects from exposure to ionizing radiation. Nevertheless, service personnel continued to be exposed to ionizing radiation in connection with the nuclear weapons testing program. These personnel were not informed of the risks associated with their participation in the program, nor was their health status systematically monitored thereafter. These factors, the Committee firmly believes, place an even greater than usual responsibility on the Government to ensure that these veterans receive appropriate compensation as well as necessary health care through the VA for any disabilities that could reasonably have resulted from such exposure.

It also has become clear that the reliance in the present claims adjudication process on DNA radiation exposure estimates has often prevented fair consideration of these claims. Scientific research over many years has proven conclusively the dangers to human health from exposure to certain higher levels of ionizing radiation. But such claims, particularly those involving health effects with long latency periods, present adjudicatory issues which differ significantly from the issues presented in claims based upon the more usual types of injuries incurred in military service. Although substantially more than 6,000 claims for compensation or DIC have been filed by veterans and their survivors with the VA since 1978 for disabilities resulting from exposure to low-level ionizing radiation, according to the VA it has awarded benefits in only 28 of those cases. The circumstances of these 28 cases and of many where the claim was rejected reveal no consistent standards or principles or analytical process governing the decisions.

Compensation and Exposure Provisions.—The Committee bill addresses the two key problems which have resulted in the denial of *over 99 percent* of all claims for VA benefits filed by radiation-exposed veterans: First, the impossibility of determining, in a given individual, whether a disability was caused by radiation exposure rather than by something else; and, second, underestimates in the DNA radiation exposure estimates on which the VA relies in claims adjudication.

The bill has two main provisions:

First, presumptive disability and death benefits, or special consideration in the adjudication of claims for benefits, are provided for veterans (and their survivors) based on exposure to ionizing rediation through participation in the nuclear weapons testing program or the American occupation of Japan and the development of certain cancers which have been associated with ionizing radiation exposure. The treatment in the Committee bill of a particular cancer is based on the strength of the association between the cancer and radiation, and between the cancer and other significant risk factors, such as tobacco smoking.

The cancers for which presumptive compensation is provided in the bill are leukemia (except for chronic lymphocytic leukemia) and thyroid cancer, or, if the veteran was exposed to at least 1 rem of radiation, cancer of the small intestine, stomach, liver (except where cirrhosis or hepatitis B is indicated), bile ducts, gallbladder, and pancreas, lymphomas (excluding Hodgkin's disease), and multiple myeloma.

Veterans exposed to radiation who are suffering from certain other cancers—cancer of the colon, lung, esophagus, rectum, pharynx, liver (when cirrhosis or hepatitis B is indicated), kidney, urinary tract, bladder, brain and nervous system, salivary glands, and bones and joints, and cutaneous melanoma—would qualify for special consideration of claims for benefits which would include the Administrator's giving conclusive weight to the Congressional findings (discussed below) relating to the relationship between the particular disease, its susceptibility to radiation exposure, and its link to other significant risk factors.

All radiation-exposed veterans—including those who fit within the special consideration category and those suffering from a disease which is not included in the Committee bill—and survivors of such veterans would retain their current-law rights to prove their entitlement to compensation under chapters 11 or 13 of title 38.

The Committee's decision to favorably report presumptive compensation benefits legislation at this time is based in part on the scientific uncertainties regarding the radiation dose responsiveness of various cancers and the unfairness of penalizing veterans for those uncertainties by denying compensation because the veteran could not prove his or her cancer was caused by radiation. However, having made that decision, the Committee has based such legislation on the scientific knowledge which is available concerning the effects of low-level ionizing radiation exposure.

The principal scientific basis relied upon by the Committee in selecting these cancers and in determining how the various cancers would be treated in the Committee bill is the most recent report of the National Academy of Sciences' Committee on the Biological Effects of Radiation (BEIR III), which was issued in 1980. BEIR III is generally regarded as a preeminent source of information on the status of scientific understanding of the health effects in humans of exposure to ionizng radiation.

In the fall of 1976, the Office of Radiation Programs, Environmental Protection Agency (EPA), asked the National Academy of Sciences for current information relevant to an evaluation of effects of human exposure to low levels of ionizing radiation. The project—BEIR III—was approved by the Governing Board of the National Research Council, whose members are drawn from the Councils of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine. The members of the BEIR III committee responsible for the report were chosen for their special expertise and with regard for appropriate balance.

BEIR III was issued in response to the EPA's request. It deals with the scientific basis of effects of low-dose radiation and encompasses a review and evaluation of scientific knowledge developed since the first BEIR report (published in 1972) concerning radiation exposure of human populations.

As it stated in the preface to BEIR III, the BEIR Committee "endeavored to ensure that no sources of relevant knowledge or expertise were overlooked in its study. To this end, it established liaison with appropriate national and international organizations and solicited the opinions and counsel of individual scientists." The BEIR Committee examined a wide range of scientific studies and evidence pertaining to radiation exposure, including studies of the Japanese survivors of the Hiroshima and Nagasaki atomic bombs, animal laboratory studies, and studies of other populatiions exposed to radiation occupationally (including radiologists) for purposes of medical treatment—including British data on over 14,000 patients treated with intensive radiation therapy for ankylosing-spondylitis between approximately 1935 and 1955 and whose health was the subject of a followup study until 1970—or accidentally. The BEIR Committee also examined studies regarding cancers considered to be radiogenic. A BEIR V report is now being prepared to update BEIR III. It is expected to be issued in 1989.

As noted above, two cancers—leukemia (except for chronic lymphocytic leukemia) and thyroid cancer—are included in the bill for presumptive compensation without reference to the level of the veteran's exposure to radiation. BEIR III lists both of these cancers as having a "very high" relative sensitivity to induction by radiation.

Eight other forms of cancer—cancer of the small intestine, stomach, liver (except where cirrhosis or hepatitis B is indicated), bile ducts, gallbladder, and pancreas, lymphomas (excluding Hodgkin's disease), and multiple myeloma—are included in the Committee bill for presumptive compensation purposes if the veteran was exposed to more than one rem of radition. These cancers are described in BEIR III as having a "moderate" relative sensitivity to induction by radiation.

The Committee notes that, with the exception of leukemia, the Committee bill would require a 5-year latency period between a veteran's first exposure to radiation in the service and the manifastation of the cancer before a cancer would be considered for presumptive compensation. This 5-year time period is included in recognition of the fact, as discussed in BEIR III, that "[t]he minimal latent period for most radiation-induced cancers is long—10 [years] or more after exposure." The Committee chose 5 years to give the veteran every benefit of the doubt but still to require a latency period.

One exception to that rule—leukemia—is treated differently in the Committee bill. Rather than requiring a latency period, presumptive compensation would be available for leukemia occurring at any time after a veteran's exposure. However, there is a cutoff date—30 years after a veteran's exposure to radiation—after which presumptive compensation would not be accorded in the case of a veteran with leukemia. This approach is incorporated in the Committee bill in recognition of the point, made in BEIR III, that "there is evidence that the increased risk of leukemia . . . does not persist indefinitely, but becomes negligible 25-30 [years] after the end of the irradiation." The Report of the National Institutes of Health Ad Hoc Working Group to Develop Radioepidemiological Tables (NIH Radioepidemiological Tables Report), issued in 1985, also notes that a "marked contrast that distinguishes leukemia . . . from most other cancers is that leukemia . . . risk appears to return to near-normal levels within a period of 30 years or less after irradiation, whereas for other types of cancer, the period of increased risk is much longer and may extend to the end of life." No similar cutoff date is applied to the other cancers specified in the Committee bill because, as BEIR III notes with reference to those cancers, "there is as yet no indication that the increased risk of cancer eventually declines." With further reference to the issue of a cutoff date, the NIH Radioepidemiological Tables Report notes that "[t]he BEIR Committee rejected a plateau model of finite length for cancer, other than leukemia and bone cancer, because after approximately 30 years of follow-up in the major exposed populations, excess risk has shown no sign of declining."

The Committee bill specifies that other cancers—cancer of the colon, lung, esophagus, rectum, pharynx, liver (when cirrhosis or hepatitis B is indicated), kidney, urinary tract, bladder, brain and nervous system, salivary glands, and bones and joints, and cutaneous melanoma—are to be given special consideration in claims for benefits, including the Administrator's giving conclusive weight to the Congressional findings relating to the relationship between the particular disease, its susceptibility to radiation exposure, and its link to other significant risk factors. These cancers are ones which, according to BEIR III, have either a low sensitivity to induction by radiation (kidney, urinary tract, bladder, brain and nervous system, salivary glands, and bones and joints, and cutaneous melanoma) or a moderate or higher radiation association but an equal or higher sensitivity to induction by other causes, so that the likelihood that the cancer was caused by radiation exposure from a nuclear weapons test operation or the American occupation of Japan is very low. In the latter group are lung cancer, which has a known, strong association to smoking,[1] cancer of the esophagus, which has a known association with smoking and alcohol,[2] cancer of the pharynx, which has a known association with smoking,[3] cancer of the colon, which is now being implicated with dietary deficiency,[4] and cancer of the liver, which has a known association with hepatitis B infection and cirrhosis.[5]

In formulating the list of cancers in the Committee bill, the Committee recognizes that the status of scientific information about the health effects of exposure to radiation is not static and the Committee intends to continue to monitor information on this subject and will propose changes to the list as appropriate. In this regard, the Committee urges that the scientific data be monitored closely by the VA's Advisory Committee on Environmental Hazards, and the Committee intends to oversee the efforts of the Advisory Committee in this regard.

The second major provision of the Committee bill would mandate that DNA radiation-exposure estimates, on which the VA relies in evaluating claims for benefits, be upwardly adjusted according to a formula based on the ranges of exposure estimates for substantial segments of the participants in each operation, as determined by the DNA estimates. Radiation exposure estimates would be increased for approximately two-thirds of all radiation-exposed veterans from both the nuclear weapons testing program and the American occupation. The estimates would be increased by from 1 to 5 rems, as follows:

For those veterans who were exposed to ionizing radiation through their participation in the nuclear weapons testing program, the recalculation would be based on the estimated amount of ionizing radiation exposure received by members of the radiation-exposed veteran's branch of service in the nuclear weapons testing operation in which he participated, or the estimated exposure received by participants in all branches of service in that operation, whichever is more favorable for the claimant.

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[1] According to the National Cancer Institute, over 85 percent of lung cancer cases in the United States are directly attributable to tobacco smoking; see also, Richard Doll and Richard Peto, *The Causes of Cancer* (Oxford: Oxford University Press, 1981), pp. 1220–24; J.F. Fraumeni, Jr. et al., "Lung and Pleura," in *Cancer Epidemiology and Prevention* eds. D. Schottenfeld, and J.F. Fraumeni, Jr. (Philadelphia: W.B. Saunders Company, 1981) pp. 564–582.

[2] See, *e.g.*, L.M. Pottern, et al., "Esophageal cancer among black men in Washington, D.C.," 67 *Journal of the National Cancer Institute* 777 (1981).

[3] See, *e.g.*, D.M. Winn, et. al., "Snuff dipping and oral cancer among women in the southern United States," *New England Journal of Medicine*, 304 (1981) 745; J. Olsen, et al., "Effect of combined alcohol and tobacco exposure on risk of cancer of the hypopharynx," 39 *J. Epidem. Comm. Hlth.* 304 (1985).

[4] See, *e.g.*, D. Schottenfeld, et al., "Large intestine," in *Cancer Epidemiology and Prevention* eds. D. Schottenfeld, and J.F. Fraumeni, Jr. (Philadelphia: W.B. Saunders Company, 1982) pp. 703–727; R.G. Ziegler, et al., "Epidemiologic patterns of colorectal cancer" in *Important Advances in Oncology 1986* eds. V.T. DeVita, Jr., S. Hellman, and S.A. Rosenberg (Philadelphia: J.B. Lippincott, 1986) pp. 209–33.

[5] See, *e.g.*, H. Austin, et al., "A case-control study of hepatocellular carcinoma and hepatitis B. virus, cigarette smoking, and alcohol consumption," 46 *Cancer Res.* 962 (1986); V.T. DeVita, Jr. et al., *Cancer Principles and Practice of Oncology* (Philadelphia: J.B. Lippincott, 1986) pp. 742–43.

More specifically, if the DNA radiation exposure estimates indicate that 25 percent or more of the participants—in the veteran's branch of service in the operation or in all branches of service in the operation—were exposed to more than 3 rems of ionizing radiation, then 5 rems would be added to the veteran's DNA-estimated radiation exposure.

Next, if the DNA radiation exposure estimates indicate that 25 percent or more of the participants—in the veteran's branch of service in the operation or in all branches of service in the operation—were exposed to more than 1 rem of ionizing radiation, then 3 rems would be added to the veteran's DNA-estimated radiation exposure.

Finally, if the DNA radiation exposure estimates indicate that 20 percent or more of the participants—in the veteran's branch of service in the operation or in all branches of service in the operation—were exposed to more than 0.5 rem of ionizing radiation, then 1 rem would be added to the veteran's DNA-estimated radiation exposure.

It should be noted that only one of the specific methods of adding to the DNA exposure level could be applied in the case of an individual veteran at a particular detonation. The effect of the application of the three-part methodology on the approximately 200,000 nuclear weapons test participants.

The effect of such recalculation of veterans' radiation exposure estimates would be as follows:

TABLE 2.—*Quantification of Radiation Dose Estimate Increases*

[Number of military participants affected by increases]

Operation/branch of service	
I. 25 percent of more of military participants with dose estimates exceeding 3 rems:	
Greenhouse—all branches	6,970
Ranger—Navy	6
Redwing—Army, Air Force	4,263
Upshot Knothole—Marine Corps	2,276
Total	[1] 13,514

[1] Have 5 rem added to estimated radiation exposure = 6.8 percent.

II. 25 percent or more of military participants with dose estimates exceeding 1 rem:	
Castle—all branches	12,652
Hardtack I—all branches	15,820
Trinity—all branches	164
Buster-Jangle—Navy	319
Dominic II—Marine Corps	62
Hardtack II—Army	330
Plumbob—Navy	574
Redwing—Navy, Marine Corps	6,907
Teapot—Army, Navy	5,199
Upshot-Knothole—Air Force, Army, Navy	14,983
Total	[1] 57,010

[1] Have 3 rem added to estimated radiation exposure = 28.8 percent.

III. 20 percent or more of military participants with dose estimates exceeding 0.5 rem:	
Crossroads—Navy	36,258
Dominic II—Navy	113
Hardtack II—Air Force, Marine Corps, Navy	292
Plumbob—Air Force, Army, Marine Corps	11,676

Operation/branch of service	
Ranger—Army, Marine Corps	15
Teapot—Air Force, Marine Corps	2,998
Trinity—Army	160
Tumbler-Snapper—Navy	556
Total	[1] 52,068

[1] Have 1 rem added to estimated radiation exposure = 26.3 percent.

Total—Categories I, II, and III: 122,592 = 62 percent.

Total—Military participants—all operations: 197,625.

Total—Military participants excluded from categories I, II, and III: 75,033

In addition, for the approximately 25,000 veterans who were exposed to ionizing radiation through their participation in the American occupation of Hiroshima and Nagasaki, Japan, 1 rem would be added to the veterans's DNA-estimated radiation exposure.

These provisions of the Committee bill, relating to ionizing radiation exposure, would terminate as to new claims submitted after September 30, 1991. This date is expected to be approximately one year after the VA submits the report from the Public Law 98-160 radiation mortality study. At that time, the Congress could make adjustments—including the addition of any cancers not included in the Committee bill which are found to be associated with the radiation exposure—as appropriate in light of the study results; and it is the Committee's intention to recommend that the Congress do just that, should the study results so warrant.

Because the benefits provided in the Committee bill thus would be interim benefits, they would not be added to the compensation benefits provided in chapters 11 and 13 of title 38. This is similar to the approach taken in 1984 in Public Law 98-542, which provided interim benefits for certain veterans exposed to Agent Orange through their service in Vietnam. However, other than the location of the statutory provision in title 38, these *are* regular VA service-connected benefits, for all purposes, including determination of disability ratings and the amount of benefits paid.

Findings.—In order to demonstrate the basis for the proposed benefit scheme, the Committee bill also would incorporate a number of Congressional findings on the state of science pertaining to ionizing radiation exposure, including the calculation of and the carcinogenic effects of such exposure; the VA's history of adjudicating radiation claims; and the difficulties involved in resolving veterans' claims for VA benefits when based on exposure to ionizing radiation.

Specifically, these findings would be as follows:

The first finding describes the results of the two-year study conducted by the GAO, discussed above, of radiation exposure and radiation safety measures during Operation Crossroads. The GAO's overall finding is set forth that the estimates of radiation exposure prepared by the DNA for that operation may have significantly understated the actual ionizing radiation exposure received by the participants in Operation Crossroads. In addition, this finding sets forth other specific GAO findings in that report.

The next finding pertains to the second GAO report, discussed above, on three subsequent test series—Operation Tumbler-Snapper, Operation Redwing, and Operation Dominic I—and the GAO's findings relating to the radiation exposure experience of the Air Force personnel who participated in the cloud-sampling efforts.

The third finding notes that, on the basis of these two GAO reports, the Congress has concluded that DNA radiation exposure estimates for the four operations studied provide an incomplete measure of actual exposure and that serious questions have now been raised about all DNA estimates.

The next finding is that DNA exposure estimates have been relied on by the VA in adjudicating, and generally denying, claims based on radiation exposure.

The fifth finding notes that approximately 200,000 veterans participated in 235 detonations of nuclear devices in connection with the nuclear weapons testing program and that, in this connection, the findings set forth in paragraphs (8) and (9) of section 2 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542), relating to the accuracy and adequacy of film badges for determining radiation exposure levels, are restated.

The next findings note that studying the radiation exposure and long-term health effects of the tests other than Operation Crossroads and of the cloud-sampling operations other than at the three operations included in the second GAO report, would entail many years, and that further delay in providing relief to veterans suffering radiation-related diseases would be unacceptable.

The next finding states that, because of the relatively small size of the population of ionizing radiation-exposed veterans, the high incidence of cancer in the general population, and the great difficulty in locating individuals 25 to 40 years after their exposure to radiation, it has been determined not to be scientifically feasible to design a morbidity study of the veterans who participated in the nuclear weapons testing program or the American occupation of Hiroshima or Nagasaki, Japan. This finding further notes that a mortality study from one operation is only now in its early stages and that an earlier mortality study of five test series was severely criticized because of its failure to utilize a scientifically appropriate control group.

The next finding notes that scientific research over many years has proven conclusively the dangers to human health from exposure to certain higher levels of ionizing radiation.

On the basis of the foregoing findings, the Committee bill next states that the Congress concludes that a significant portion, if not all, of the veterans present at the nuclear detonations were exposed to some quantity of low-level ionizing radiation from inhalation, ingestion, or external exposure and that no fully acceptable or reliable method has been developed to estimate those levels of exposure.

The measure next presents a series of findings regarding the history of the VA in adjudicating veterans' claims based on exposure to ionizing radiation and regarding the difficulties involved in resolving such claims.

The next finding notes that there is some evidence that officials of the United States Government were aware as early as 1945 of the risks of long-term, adverse health effects from exposure to ionizing radiation but that, nevertheless, military personnel continued to be exposed to ionizing radiation in connection with the nuclear weapons testing program. The finding states that these military personnel were not informed of the risks associated with their participation in the program, nor was their health status systematically monitored thereafter.

Accordingly, the measure sets forth the finding that exposing these military personnel to such risks in experiments relating to the development and potential use of nuclear weapons, and making no systematic effort to monitor their health thereafter, places an even greater than usual responsibility on the Government to ensure that these veterans receive appropriate compensation as well as necessary health care through the VA for any disabilities resulting from such exposure.

The Committee bill further states that the precise correlation between specific doses of ionizing radiation and the probability of cancer induction in a particular body organ or tissue in a given individual is not known at this time. In this regard, a series of findings is set forth which discusses the relationship between certain forms of cancer and exposure to radiation and other known risk factors.

Finally, the bill reiterates the finding stated in section 2(13) of Public Law 98-542 that it has always been the policy of the VA, and it is the policy of the United States, that when, with respect to individual claims for service connection of diseases and disabilities, after consideration of all evidence and material of record, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of a claim, the benefit of the doubt in resolving each such issue shall be given to the claimant.

Health-care Entitlement.—The Committee bill would extend the entitlement to VA health care for ionizing radiation-exposed veterans, which is discussed above, until September 30, 1991, the termination date of the provisions in the bill relating to the handling of new radiation claims. Under current law, such health care entitlement would terminate after September 30, 1989.

Reports of VA Advisory Committee.—Finally, the Committee bill would require that the reports of the Advisory Committee, which are required under section 6(d)(3) of Public Law 98-542 to be sent to the Administrator of Veterans' Affairs, be sent concurrently to the Senate and House Veterans' Affairs Committees. This should help ensure that the two Committees are able to remain fully cognizant of current developments relating to scientific inquiry into the impact of radiation exposure and of the Advisory Committee's views on appropriate changes in how the VA should respond to concerns related to such exposure.

The Committee has given a great deal of consideration to how to address the issue of compensation for these veterans and their survivors and possible resolutions of the difficulties inherent therein, and believes that the Committee bill provides a compassionate and fair approach. The Committee believes that the Congress has a responsibility to ensure that the burden of answering what may prove to be unanswerable questions regarding the health effects of exposure to ionizing radiation will no longer generally be used to deny benefits to veterans and their survivors based on exposure in the nuclear test program or in the occupation of Japan.

TITLE III—HEALTH CARE

Part A—Health-Care Programs

Services to Overcome Service-Connected Disability Affecting Procreation

Section 301 of the Committee bill, which is derived from section 2 of S. 6, would amend section 601(6) of title 38 to authorize the VA, in the case of veterans who request such services, to furnish services to help a veteran or a veteran's spouse achieve pregnancy in cases in which the veteran's service-connected disability impairs the veteran's ability to procreate.

Background

Section 2 of S. 6 as introduced, was derived from and is similar to section 205 of S. 2422 as reported by the Committee on September 16, 1986, and passed by the Senate on September 30, 1986. The House did not agree to this provision, however, and it was not enacted in the legislation that became Public Law 99-576.

The VA does not believe that it has legal authority to provide services, such as artificial insemination or *in vitro* fertilization, to help overcome a service-connected disability of a veteran which impairs the veteran's ability to procreate. Although the Committee does not believe that the VA's legal interpretation of its existing authority is necessarily correct, it is clear that the agency will adhere to that viewpoint absent legislation to the contrary. Hence, this provision in the Committee bill is designed to remove any doubts that may exist on this issue.

The Committee notes that the VA opposed this provision at the Committee's May 21 hearing. In testimony very similar to that which it gave a year earlier on the provision in S. 2422, the VA noted that "philosophical and practical questions continue to exist regarding the appropriateness of VA authorizing services to assist in a veteran or a veteran's spouse in becoming pregnant."

Committee bill

The new authority poses under the Committee bill would be limited to cases in which a veteran's service-connected condition impairs the veteran's ability to procreate. It would, therefore, be targeted on those veterans as to whom the VA has always had the greatest responsibility—those disabled in service. Because of this targeted focus, the Committee anticipates that there will be a relatively limited number of veterans who would be eligible for and wish to receive these new services. In addition, the Committee expects that the VA would utilize this authority judiciously and provide the services in question only in cases in which it is clear that the inability to procreate is a function of the veteran's service-connected disability and is not the result of some other physical or psychological cause. The Committee intends the VA to act primarily as the source of services to correct an identified, diagnosed problem and not as a source for determining the cause of infertility in the absence of a medical basis for suspecting that the cause is a service-connected disability. Thus, it is not anticipated that there will be significant new costs associated with this proposed change in the law.

However, to the extent that there are new costs associated with this new authority, it is the Committee's intention that they be absorbed through a shift of funds from lower priority expenditures under the VA's medical care account, $9.7 billion in FY 1987, and that, as a result, no new appropriations would be provided in connection with the new authority. The end result of such a shift in resources would be an increase in services available for treatment of service-connected disabilities.

With specific reference to the philosophical questions raised by the VA at the May 21 hearing, the Committee appreciates the fact that the entire field of medicine dealing with fertility problems and with helping to achieve procreation in individuals with such problems is relatively new and evolving. The Committee does not see the newness of the field as an appropriate basis for the VA's not becoming involved in furnishing services to those veterans whose service-connected conditions have caused their procreative inability.

With specific reference to the practical questions noted by the VA at the hearing, the Committee is confident that, should this authority be enacted, the VA would be able through the development of appropriate guidelines to set forth the conditions under which the services will be furnished. In this regard, the Committee agrees with the testimony of the Disabled American Veterans at the May 21 hearing that the VA would not be providing "obstetric services, prenatal or postnatal care in conjunction with any successfully achieved pregnancy."

Finally, with reference to the overall issue of infertility prevention and treatment, the Committee notes that the Office of Technology Assessment undertook on June 1, 1986, an 18-month project to study the causes of infertility and approaches to prevention. This study, requested in part by then-Chairman Murkowski in a September 13, 1985, letter will focus in part on the special reproductive problems of veterans. The OTA expects to publish the report in January 1988. The Committee looks forward to the completion of this OTA project and anticipates that it may yield information useful to the Committee and to the VA as the agency seeks to assist veterans with fertility problems.

Fee-Basis Authority Expansion

Section 302 of the Committee bill, which is derived from section 1(c) of S. 939, an Administration proposal, would amend section 603(a) of title 38 to authorize the VA to contract with non-VA health-care entities to provide emergency hospital care for veterans being furnished nursing home care in the community at VA expense, and to provide inpatient or outpatient observation and examination of veterans to determine eligibility for VA benefits.

Background

Under current law, the VA lacks the authority to pay for emergency hospital care for veterans who have been placed in community nursing homes at VA expense. This limitation is making it increasingly difficult for veterans—many of whom have limited incomes and lack geographic accessibility to a VA medical center—placed in community nursing homes located great distances from VA hospitals to receive needed emergency hospital care. Some nursing homes are becoming unwilling to accept VA patients who have no means of financing hosptial care in the event of a medical emergency.

In addition, under existing law, the VA does not have the authority to contract for hospitalization or outpatient services in order to observe and examine veterans so that determinations can be made with regard to eligibility for veterans' benefits such as disability compensation. In certain cases, the VA may not have the ability to provide the types of specialized services needed for certain examinations. In this regard, it may be more effective to contract for these services.

Committee bill

The changes proposed in the Committee bill would remedy these situations by providing the VA with specific authority to contract with non-VA health-care entities (1) to provide emergency hospital care for veterans who are being furnished nursing home care in the community under a VA contract and (2) to provide outpatient as well as inpatient observation and examination of a veteran to determine eligiblity for a VA benefit.

Report on Use of Contract-Care Authorities

Section 303 of the Committee bill would amend section 201(b) of the Veterans' Health Care Amendments of 1979, Public Law 96-22, which requires the Administrator to submit, on an annual basis, a full report of its contract-care authorities, so as to conform the references in this 1979 provision to changes made in the VA's contract authorities by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99-272.

Background

In 1979, the Committee undertook an extensive analysis of the VA's authority to pay for a veteran's care in a non-VA setting—so called "contract" or "fee-basis" care. In the Committee report accompanying S. 7 (S. Rept. No. 96-100, p. 54), the Committee noted that there have been some instances in which specific relevant date regarding the provision of contract care and treatment have been difficult to obtain or unavailable under the VA's recordkeeping practices. To address this problem and in order to help ensure the availability of adequate data regarding the provision of fee-basis care and treatment, the Committee reported in S. 7 a provision, ultimately enacted as section 201(b) of Public Law 96-22, a requirement that the Chief Medical Director submit, through the Administrator, to the appropriate committees of the Congress by February 1, 1980, and annually thereafter, full reports on the provision of contract care, including a breakdown of the numbers of veterans provided contract treatment, together with the average cost and duration thereof, in each State, territory, possession, the Commonwealth of Puerto Rico, and the District of Columbia in the various categories described in title 38 provisions relating to contract care and treatment.

The VA has submitted only one report, in April 1980, and that report did not provide all of the specific data. Subsequently, beginning in April 1981, and continuing through to the submission this year of the draft legislation which was introduced as S. 939, the VA has advocated the repeal of this reporting requirement. In the initial such request in 1982, the VA cited significant difficulties in obtaining the needed data and indicated that it had to be collected manually. However, the VA noted that it was "planning to develop a computer-assisted system to collect the required date for preparation of the report" which, once completed, would result in information being "available at much less cost and more quickly" and being "more reliable than the manually collected data".

A phenomenal growth in the cost of hospital contract care, community nursing home care, and outpatient care is evident when comparing fiscal year 1980 data, the year the report on contract care was first required, to data for fiscal year 1986. The total cost of hospital contract care rose from $71 million in 1980 to $156.8 million in 1986, an increase of 121 percent, while the cost per day for this care rose from $160 to $553.50, an increase of 246 percent, over the same time period. The total cost to the VA of community nursing home care rose from $115.4 million in fiscal year 1980 to $281.5 million in 1986, a 144-percent increase, and the cost per day rose 73.5 percent, from $36.96 to $64.13. Expenditures for contract outpatient care rose from $105.4 million to $145.9 million, a 38-percent increase. In total, costs for "fee-basis" or contract care in those categories doubled from the time that the first report was due through fiscal year 1986—$291.8 million in 1980 to $584.2 million in 1986, a rise of 100 percent.

Committee bill

In light of the substantial growth of the VA's cost of care expenditures over the last 7 years, the tremendous advances in the VA's automated data processing capacity in recent years, and the Committee's continuing interest in receiving data on the VA's overall fee-basis program, section 303 of the Committee bill, rather than repealing the reporting requirement, as proposed in S. 939 as introduced, would revise the requirement to reflect changes in the basic statutory scheme relating to this program which were made with the enactment of COBRA.

Hospital Care or Medical Services for Veterans Outside the United States

Section 304 of the Committee Bill, which is derived from S. 894 and S. 939, would amend section 624(b) of title 38, to allow the VA to furnish hospital care or medical services for a service-connected disability, or as part of a program of vocational rehabilitation for a service-connected disability, to any eligible veteran residing or sojourning abroad.

Background

Section 624(b) of title 38 limits the VA's authority to furnish necessary hospital care and medical services outside the United States to otherwise eligible service-connected-disabled veterans who are citizens of the United States or who are in the Republic of the Philippines for the treatment of their service-connected disabilities. This law excludes foreign nationals, particularly a group of approximately 1,200 Canadians, who were disabled while serving as members of the United States Armed Forces.

Committee bill

The Committee bill would authorize the VA to furnish hospital care or medical services for a service-connected disability, or as part of a program of vocational rehabilitation, to any eligible veteran without regard to the veteran's citizenship or location. The Committee believes that eligibility for such health care should be based on the veterans' service-connected disability and not the citizenship of the veteran or his or her location. The Committee emphasizes that while this provision would allow the VA to furnish care to non-citizens located outside the United States, it does not create new eligibility for benefits or a new program of benefits. Eligibility for this care would still be limited to eligible veterans of the Armed Forces of the United States. These veterans, even if they are not U.S. citizens, are now eligible for care within the United States. Similarly, veterans participating in a program of vocational rehabilitation for their service-connected disability are currently eligible for necessary medical care in the United States to allow them to pursue their program of vocational rehabilitation.

The Committee anticipates that this provision would be implemented by applying the procedures now in place for furnishing care to U.S. citizen veterans to those veterans who are not U.S. citizens. The Committee notes that, as of September 30, 1986, service-connected disability compensation was being paid to 5,520 veterans outside the United States and the Philippines. Many of these veterans are United States citizens and are already eligible for care.

Eligibility for Domiciliary Care

Section 305 of the Committee bill, which is derived from section 3 of S. 6, would amend section 610(b) of title 38 to revise the existing eligibility criteria for VA domiciliary care so as, consistent with current VA philosophy and practice, to provide eligibility for veterans who are in need of such care for the purpose of receiving treatment or rehabilitation and who either have a service-connected disability or are incapacitated from earning a living and have no adequate means of support.

Background

Under current section 610(b), two general categories of veterans are eligible for domiciliary care: In the first category are service-connected disabled veterans who are suffering from a permanent disability or tuberculosis or a neuropsychiatric ailment and who are incapacitated from earning a living and have no adequate means of support; in the second, more general category are veterans in need of domiciliary care and unable "to defray the expenses of necessary domiciliary care". Although this provision appears to establish more stringent criteria for a veteran with a service-connected disability than one without, section 622(g)(2) of title 38 automatically accords the status of "inability to defray necessary expenses" to a veteran with a service-connected disability. The first criterion thus appears meaningless.

Current VA practice tends to overlook the first category as well. When a veteran seeks admission into a VA domiciliary, the first determination generally made by the VA is whether the applicant is medically eligible—that is, has a disability, disease, or impairment which incapacitates the applicant from earning a living. Once the VA decides that a veteran is medically eligible, a determination is made regarding income eligibility. A veteran with an income of $415 or less a month is eligible for admission as a result of having an "inadequate means of support". If an applicant's income exceeds $415 per month, obligations against such income are taken into consideration and a waiver can be granted by the domiciliary director if the veteran is found to be unable to afford necessary community care. According to the VA, criteria relating to service-connected disabilities and non-service-connected disabilities are not factors in this decision process.

The issue of how eligibility for domiciliary care should be stated in the law arose in 1985 in the context of the reconciliation legislation—title XIX of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99-272, which revised eligibility criteria for VA hospital, nursing home, and outpatient care. As noted in the explanatory statement that accompanied the conference report on the reconciliation legislation—H. Rept. No. 99-453, page 695—despite agreement among the conferees that the existing eligibility criteria for domiciliary care should be revised, it was not possible to reach a final agreement with reference to domiciliary care at that time and the final legislation left the eligibility unchanged. In reaching that result, however, the conferees noted that they were "not expressing satisfaction with the status quo" and also noted that "[b]oth Committees on Veterans' Affairs plan to hold hearings [in 1986] to consider appropriate revisions to the eligibility for domiciliary care."

Hearings were held by this Committee on May 20, 1986, to consider legislation addressing this issue—section 5 of S. 2388—as well as other legislation relating to veterans' health care. Although the VA supported the approach taken in section 5 of S. 2388, which was substantively identical to the language which has been included in section 305 of the Committee bill, and this Committee subsequently reported a provision derived from that measure—section 207 of S. 2422—which was passed by the Senate on September 30, 1986, the House and Senate Committees again were not able to reach an agreement on this issue in the legislation that was ultimately enacted as Public Law 99-576.

At the May 21, 1987, hearing, the VA again testified in support of this provision governing domiciliary eligibility.

Committee bill

Section 305 of the Committee bill is the result of the Committee's further consideration of this issue. Under the bill, the VA would be authorized to provide domiciliary care to veterans who are in need of such care for the purpose of receiving treatment or rehabilitation and who either have a service-connected disability or are incapacitated from earning a living and have no adequate means of support. The Committee believes that this change would clarify the confusing current law eligibility criteria and would make the law consistent with current VA philosophy and practice.

During the Committee's May 21 hearing, the VA stated that, if this proposal were enacted, the agency would implement regulations according a priority to service-connected veterans ahead of nonservice-connected veterans for domiciliary care. The Committee believes that such a priority is appropriate and encourages the VA to implement such a regulatory provision.

With further reference to the issue of eligibility for domiciliary care, the VA noted that the limitation on veteran earnings in current regulation of $415 per month, which is used to determine whether a veteran has "no adequate means of support", may be in need of revision. The General Accounting Office (GAO) in a June 1987 report entitled "VA Health Care—Financial and Quality Control Changes Needed in Domiciliary Care", likewise recommended that the income limit be raised. The Committee notes that the $415 limit has not been revised since 1980, is significantly lower than the income limits for other VA health-care programs, is considerably below the national poverty level as well as the VA's own pension income eligibility standard, and does not take into consideration the size of the veterans' family. The Committee understands, that the VA is reviewing the current income limit and encourages their efforts in that regard. The Committee will continue to consider this issue during this Congress.

Pilot Program of Noninstitutional Alternatives to Institutional Care

Section 306 of the Committee bill, which is identical to section 5 of S. 6, would amend subchapter II of chapter 17 of title 38 to require the VA to conduct, from January 1, 1988, through December 31, 1991, a 4-year pilot program at not less than five nor more than ten demonstration project sites to evaluate noninstitutional alternatives to institutional care.

Background

Section 5 of S. 6 as introduced, was, except for date changes and minor drafting changes, identical to section 204 of S. 2422 as reported by the Committee last September. That provision—which was derived from section 8 of S. 2388, legislation introduced by Chairman Cranston on April 30, 1986, and from section 3 of S. 2445 as introduced by then-Chairman Murkowski on May 8—was considered and passed by the Senate as part of an amendment to H.R. 5299 on September 30, 1986. The House and Senate Committees were not able to reach agreement on this pilot program and the provision was not included in the measure that was ultimately enacted as Public Law 99-576.

In addition, a similar provision was reported by the Committee as part of S. 876 (S. Rept. 99-101) on July 8, 1985. That measure was considered and passed by the Senate on July 30, 1985, as part of an amendment to H.R. 505. Unfortunately, the Senate and House Committees did not agree on this provision and, thus, it was not included in the final passed version which was ultimately enacted into Public Law 99-166.

The Commitee is again acting on this provision because it remains convinced that, in light of current developments in health-care services which enable more individuals to receive needed care without being institutionalized and of the rapid increase in the number of veterans age 65 and older who may be seeking care from the VA in the years ahead, the VA must take steps to develop new approaches to addressing the health-care needs of veteran patients. By 1990, there will be 7.2 million veterans in this age group and there will be 9 million veterans age 65 or older by the year 2000. The kinds of new VA approaches this legislation envisions must include an emphasis on increased interaction with community entities that provide health and health-related services if the VA is to get the maximum health-care benefit out of every dollar spent. There also must be a greater emphasis on reducing the need for institutional care for veterans.

Further background information regarding the approach proposed in this section of the Commitee bill is provided in the Committee's report on S. 2422 last year (S. Rept. No. 88-444, pages 45-48) and the Committee's report on S. 876 (S. Rept. No. 99-101, pages 37-42).

With specific reference to the goal of avoiding institutional care and of providing services in an individual's home, the Committee notes that the VA, in its 1984 report, "Caring for the Older Veteran", set forth a number of objectives that were central to the agency's strategies for meeting the needs of the older veteran and that the first of these was:

> To sustain older individuals' independence, comfort, and contentment in their own home environment for as long as possible, providing supportive services to do so.

Clearly, this proposed pilot program would help reach that goal.

On the issue of increased VA-community interaction and cooperation, the Committee is convinced that the VA must make greater use of community resources which help to maintain individuals in their homes—such as homemaker, personal-care, communal or at-home nutrition, and transportation-assistance services—in order for the agency to respond in a reasonably adequate way to the growing demand for care that it is facing and will continue to face as the veteran population ages so rapidly between now and the end of the century.

Committee bill

Under the Committee bill, the Administrator would be required to conduct a pilot program through which the VA would provide certain veterans with medical, rehabilitative, and other health services and, by contract with non-VA entities, with health-related services.

These health and health-related services would be provided in noninstitutional settings—such as the veteran's home or a personal-care or board-and-care home—with the goal of being able to avoid institutional care, such as in a hospital, nursing home, or domiciliary facility, for the participants in the program.

Participation in the program would be limited to veterans eligible for and otherwise in need of VA hospital, nursing home, or domiciliary care, and priority for care and services through the pilot program would be accorded to veterans with service-connected disabilities, to veterans who are age 65 or older, to veterans who are totally and permanently disabled (which would include those who, by reason of blindness in both eyes, have only light perception or are in need of regular aid and attendence), and to veterans who are suffering from Alzheimer's disease or another form of dementia.

The Committee notes that since 1980 DM&S has conducted an independent living program to provide a range and combination of services which would enable disabled veterans to live and function at their maximum level of independent within the community. The program uses both VA and community resources to provide services to veterans, including veterans with spinal cord injuries, aged veterans, veterans with neurological and psychiatric impairments, and others. Services include, among others, transitional living, activities of daily living, independent living skills, and counseling.

Last year, in section 333 of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, Public Law 99-576, a program of independent living services, established by Public Law 96-466 and carried out through the Department of Veterans Benefits, was extended for three years, through fiscal year 1989.

The Committee urges coordination between the Department of Veterans' Benefits and DM&S in the continued implementation of these programs and, when appropriate, linking the services under these two programs. The provision of health-related services provided in noninstitutional settings under the pilot program which would be established by section 306 of the Committee bill is consistent with the mission and goals of the independent living services program and other VA ambulatory-care programs such as adult day health care. With respect to the adult day health care program, the VA requires that any such program in which veterans participate under a contract arrangement include rehabilitation services, defined by VA regulation (51 Fed. Reg. 26,027, July 18, 1986) to include assistance for daily living (including bathing, feeding, toileting, and ambulation), case management, nutrition services, recreation therapy, transportation, and maintenance of client records. The Committee believes that the noninstitutional care pilot program would provide a valuable addition to the VA's continuum of care.

With reference to the cost of this pilot program, the bill would limit the total cost over the life of the program to 60 percent of the cost that would otherwise have been incurred by the VA if the veterans participating in the program had been furnished nursing home care instead of the noninstitutional services provided under the program. It is the Committee's intent that the pilot program be carried out through the use of funds that would otherwise be used for the provision of more costly intermediate care and that the funds saved by this pilot program be applied to care for more veterans than would be served in its absence.

Community Nursing Home Care in Alaska and Hawaii

Section 307 of the Committee bill, which is derived from section 1(d) of S. 939, an Administration proposal, would amend section 620(a)(2)(A) of title 38 to authorize the VA, when contracting for community nursing home care for eligible veterans in Alaska or Hawaii, to pay at a rate of up to 45 percent (or up to 50 percent, if necessary, of the cost of general community hospital care in a hospital under contract with the VA in the State.

Background

Under existing law, the maximum per diem rate the VA may pay for contract nursing home care is 45 percent of the cost of care in a VA general hospital or, where deemed necessary, 50 percent of that cost. Currently, there are no VA hospitals in either Alaska or Hawaii and the cost of nursing home care has been high in those states. In view of these factors, the VA has recommended that the maximum per diem rates in Alaska and Hawaii be 50 percent of the cost of care in community general hospitals in lieu of a percentage of the cost of care in a VA general hospital.

Committee bill

Section 307 of the Committee bill would remedy this situation by providing a new indexing base for Alaska and Hawaii. These provisions would authorize the VA to contract for community nursing home care for eligible veterans in Alaska or Hawaii, at a rate of up to 45 percent (or, as is currently authorized in section 620(a)(2)(B), up to 50 percent, if necessary) of the cost of care in a community general hospital under VA contract in those states.

As introduced in S. 939, this provision would have required the payment to have been at a rate of 50 percent of the cost of such general community hospital care. The Committee notes that the modification made to this provision was intended to ensure that the rate of reimbursement was not unnecessarily high. The Committee expects that the VA will utilize the 50 percent rate only when required to obtain the care needed for veterans in Alaska and Hawaii.

AIDS Matters

Section 308 of the Committee bill would require the VA to establish a system-wide AIDS education and training program for patients and employees of VA health-care facilities; would amend section 4132 and 4133 of title 38 to expand the scope of existing VA alcohol and drug treatment confidentiality and nondiscrimination provisions to encompass individuals who are infected by the human immunodeficiency virus (HIV), the virus that causes AIDS; and would prohibit the VA from implementing any widespread HIV testing program unless Congress specifically appropriates funds for that purpose.

Background

AIDS is this nation's and, very likely, the world's greatest health threat. Six years ago AIDS was known to the United States. Today, tens of thousands of Americans are suffering from AIDS and other illnesses caused by infection with the HIV. AIDS has already claimed the lives of more than 20,000 Americans, and an estimated 1.5 to 2 million more have been infected with the HIV. Many experts estimate that a majority of them will likely develop AIDS within the next 10 years.

Nearly 6 percent of all AIDS cases in the U.S. are being cared for by the VA. The VA has treated more than 2,000 veterans with AIDS and will see about 1,300 patients in fiscal year 1987 alone. If the AIDS caseload continues at the current rate, the VA will have treated 14,000 AIDS patients by 1991.

Currently, there is no cure or treatment for AIDS, and it is always fatal. Scientists predict that a vaccine will take at least 5 years to develop.

Thus, most experts believe that education and prevention are the only tools available to prevent further spread of the HIV infection at this time. Unfortunately, as an August 1987 GAO report, entitled "AIDS Prevention," found, sufficient funding and national leadership have not yet been provided for these efforts.

One of the most controversial AIDS issues concerns testing individuals for the presence of the antibody to the HIV. In a May 31 speech, President Reagan called for more widespread, and, in some cases, mandatory testing for the AIDS antibody. In particular, he requested a review be undertaken of mandatory testing of VA hospital patients.

Because of the gravity of the epidemic and its impact on the VA, on June 24 the Committee held a hearing on AIDS issues in general and as they relate to the VA specifically. With regard to testing, the Committee received extensive testimony about who should be tested, under what circumstances testing should occur, and how best to protect the confidentiality of the results of the test. The testimony also stressed that education and counseling about how AIDS is transmitted and how it can be prevented is critical for both high-risk individuals and the general population.

Witnesses at the June 24 hearing, including the VA's Chief Medical Director (CMD), Dr. John A. Gronvall, raised several serious concerns regarding the concept of such testing. First, some witnesses were concerned that, since veterans are generally a low-risk population and the false-positivity rate (a positive test result even though the individual has not been exposed to the HIV) for low-incidence populations is quite high, many veterans would be needlessly alarmed by an incorrect test result; second, serious questions were raised about whether a mandatory testing program for 1.4 million hospital inpatients each year would be cost-effective; third, the VA's CMD testified that the VA does not currently have the capacity to perform 1.4 million tests a year; fourth, mandatory testing may deter some veterans from seeking care or counseling; and fifth, representatives of two health professions organizations, the National Association of Veterans' Administration Physicians and the American Nurses Association, opposed mandatory testing and testified that hospital personnel should take precautions whenever they might come into contact with blood or body fluids, regardless of the patient's antibody status. Moreover, witnesses, including the CMD, testified overwhelmingly that counseling—about AIDS as well as the test itself—must be an integral part of any testing program and that informed consent is critical.

With further regard to widespread testing proposals, the Committee notes that there have been numerous studies concerning the high false positivity rate in low-incidence populations. The Office of Technology Assessment, for example, recently conducted a study regarding the accuracy and reliability of HIV antibody testing and found that even under ideal testing and laboratory conditions, antibody-positive specimens will be missed and antibody-negative specimens will be falsely identified as positive. Moreover, the OTA found that the confirmatory test that is used after the initial screen can often produce ambiguous results, even when performed properly.

Thus, in testimony presented before the House Committee on Small Business on October 19, the OTA concluded, "These [examples] show that the problem of false positives can take on startling dimensions when applied to low-risk populations, and the false positive problem is a principal reason why concerns have been expressed over proposals for mass testing programs directed at whole classes of people, such as hospitalized patients and the general public."

The issue of maintaining confidentiality of the test results was also raised. Individuals who have the antibody to the HIV, whether they have AIDS or are without symptoms, have experienced extensive discrimination relating to housing, insurance, schools and employment.

The Committee learned, from three management officials at VAMCs, that medical centers policies for recording and storing results of the antibody test vary. Their testimony disclosed that one VA medical center, out of a concern for ensuring the confidentiality of test results in order to protect its patients from discrimination, maintains all test results in a separate file kept with the pathologist; although the other two centers generally enter the results directly into the patient's medical record, one does so as to a positive result only after the test result is confirmed by followup testing.

Also, as noted in testimony at the hearing, the VA currently discloses medical information to insurance companies and other third party payers in connection with claims for reimbursements under section 629 of title 38, for the care of certain veteran-patients. No special instructions have been given by VA Central Office as to the disclosure of patients' HIV antibody status to third-party payers.

Because of the potential for misuse and abuse of information regarding HIV antibody status, public health experts testified that it is essential to keep this information confidential. Individuals may othrwise be deterred from seeking medical help or consenting to the test because of the not-unfounded fear that information about their antibody status will become known to insurers and to other members of the public with potentially devastating effects upon their lives and work status.

Committee bill

Education and prevention programs.—The Committee bill would require the VA to establish a comprehensive system-wide program of AIDS education and prevention activities for VA health-care workers and patients. The VA testified at the June 24 hearing that it has initiated a variety of training and education programs. The Committee bill is intended to help ensure that all VA health-care facilities institute effective education and training programs and to provide for greater uniformity of those progrms.

The VA has a tremendous capacity to reach millions of veterans and their families and to educate them about AIDS. The comprehensive public education program required by the Committee bill would include a plan to distribute periodically the Surgeon General's Report and other materials on AIDS to VA employees and beneficiaries, and a requirement that the VA provide the Surgeon General's report to each veteran-patient who is identified by DM&S as being at high-risk for AIDS.

Under the Committee bill, the VA would be required to establish and implement a program for AIDS education, training, clinical-skills-improvement, and other pertinent activities for all health-care personnel and to institute infection-control procedures for each personnel as well as health-care personnel as well as health-care support staff. The Committee strongly urges that this include (1) training programs for physicians, substance-abuse-treatment personnel, and mental health professionals regarding counseling and testing of veterans; (2) a mechanism to disseminate on a regular basis the most up-to-date scientific and medical information and to provide continuing education on the diagnosis and treatment of AIDS and AIDS-related complex to all health-care personnel who are involved in the care and treatment of AIDS patients; and (3) continuing education of direct-care providers, as well as support staff, regarding appropriate infection-control procedures to reduce the transmission of AIDS.

The Centers for Disease Control have published numerous documents making recommendations for the prevention of HIV transmission in health-care settings. The most recent, dated August 21, 1987, emphasizes "the need for health-care workers to consider *all* patients as potentially infected with HIV . . . and to adhere rigorously to infection-control precautions for minimizing the risk of exposure to blood and body fluids of all patients." The Occupational Safety and Health Administration of the Department of Labor in conjunction with the Department of Health and Human Services issued a joint advisory notice on October 30 to require all health-care institutions to comply with standards, based on the CDC guidelines, that are designed to minimize exposure to the HIV.

Second, the Committee bill would amend section 4132 of title 38, which relates to maintaining the confidentiality of VA medical records regarding alcohol and drug treatment, to make it applicable to individuals with the HIV infection. Records of the identity, diagnosis, prognosis, or treatment of any patient infected with the HIV would be prohibited from being disclosed—in the same way as records for drug and alcohol abusers are prohibited from being disclosed—except in medical emergencies and for the purpose of conducting scientific research and audits.

The VA would be specifically authorized, however, to release that information to a public health officer in a state requiring HIV infections to be reported or to federal health officers pursuant to a requirement of federal law. The Committee is aware that legislation is pending in Congress which would establish certain other circumstances (such as if an individual with HIV infection were donating an organ) under which information would be authorized to be disclosed and, therefore, the bill would expressly make the VA subject to the provisions of any otherwise applicable federal legislation enacted regarding confidentiality of medical records relating to HIV infection.

The Committee bill would also amend section 4133 of title 38, which prohibits discrimination in the admission of drug and alcohol abusers to VA health facilities, to include individuals with the HIV infection.

Counseling and testing programs.—With regard to counseling and testing for exposure to the HIV, based on the extensive hearing testimony and all other information available to the Committee at this time, the Committee concurs with and supports the VA's current policy on testing and counseling as was presented at the June 24 hearing by the VA's CMC, Dr. John A. Gronvall, as follows:

> Our view is that testing should be focused on those groups of veterans where there is reasonable likelihood of a payoff by testing and that the requirement for counseling before and after testing is an absolute imperative. It is our stated policy that all testing should be done with informed consent. We have uniformly felt very strongly that the patient needs to be aware that the test is being performed and why it is being performed, since our desire is to have the patient cooperate with his or her physician in changing behavior or doing whatever is necessary, both in the patient's best interest and in the best interest of contacts with the patient.

The Committee bill would prohibit any widespread routine HIV testing program of VA patients—that is, a program for offering testing to patients other than substance-abuse patients and other patients at high risk for AIDS—unless Congress specifically appropriates funds for that purpose. Although the Committee advocates that the Va make readily available voluntary testing and counseling service to high-risk veteran-patients and provide testing and counseling to others who seek to know their HIV antibody status, it considers questionable the siphoning of significant amounts of patient-care funds to pay for offering testing to veterans at low-risk of infection. Hence, the Committee strongly recommends that the VA undertake a focused voluntary AIDS testing and counseling program along the following lines:

First, counseling should be routinely provided and HIV testing routinely offered to any VA patient who is believed to be at high risk for infection and such patients should be encouraged to undergo testing.

Second, all VA substance-abuse programs should routinely offer HIV testing and counseling and substance-abuse counselors should be trained to encourage all intravenous drug-abuse patients to agree to undergo testing and (as required by the Committee bill) give each of their patients a copy of the Surgeon General's report on AIDS. Generally, intravenous drugs abusers who test positive for the HIV antibody should be given a priority for admission to VA substance-abuse programs.

The Committee notes that a recently reported study of 46 intravenous drug abusers participating in a VA methadone program in Minnesota found that, when promised confidential, voluntary tests, 85 percent of the paticipants agreed to be tested for the presence of the HIV antibody. Although other studies have reported high percentages of intravenous drug users as being HIV antibody positive, none in this group tested positive. The Committee finds encouragement in the reported high awareness of the risk of AIDS in this group and the high percentage who agreed to be tested.

Third, in order to help VA health-care facilities expedite the establishment of programs as well as to provide valuable information and guidance on these very complex issues, the Committee urges the CMD to provide all VA health-care facilities with specific guidelines regarding counseling and testing for the HIV. These guidelines should include policies ensuring the confidentiality of results and nondiscrimination against AIDS patients or those infected with the HIV, applicable policies regarding reporting of cases to state and federal public health officers pursuant to federal or state law, and guidance on specific safety precautions to be followed by VA health-care workers and support staff in order to avoid HIV infection. Also, based on information from experts in this field, the Committee recommends that the guidelines stress the importance of pre- and post-test counseling.

As to pre-test counseling the Committee urges that the CMD's guidance cover counseling individuals on measures to take to prevent the transmission of the HIV and, among other things, information regarding (1) the accuracy and reliability of testing for the HIV; (2) the probability of developing AIDS if the individual is found to be infected with the HIV; and (3) the confidentiality of results within the VA and the VA's policy regarding compliance with any federal or state public-health-reporting laws.

With regard to post-test counseling, the Committee recommends that the guidelines stress that the physician or other health-care professional give the results of the test to the individual in person and, among other things, provide the individual (1) if the test result is negative, with counseling regarding the limited significance of a negative result; and (2) if the test result is positive, with (a) information regarding the availability within the VA and the community of appropriate social, support, and health services, including mental health care; (b) counseling regarding the importance and benefits of locating and counseling any individual whom the infected individual may have exposed to the HIV virus; and (c) information regarding the availability of the services of public health authorities for locating and counseling individuals who may have been exposed to the virus.

Rules and Regulations Governing the Furnishing of Health Care

Section 309 of the Committee bill, which is derived from section 6 of S. 6, would amend section 621 of title 38 to place certain limits on the authority of the Administrator to prescribed limitations on the furnishing of health-care services to veterans except during times of national or regional emergency.

Background

In the midst of the Great Depression, Congress passed the Economy Act of 1933, which cut severely into the then-existing scheme of veterans' benefits. Among the wide-ranging provisions in that measure was one which authorized the Administrator of Veterans' Affairs to limit by regulation the furnishing of hospital and domiciliary care to veterans.

Although this authority to limit care has not been utilized in recent times, the VA has this discretion at its disposal, regardless of the laws enacted by the Congress. In 1984, during congressional action on reconciliation legislation, the VA's Office of General Counsel submitted to the staffs of the two Veterans' Affairs Committees an informal "white paper" which included a discussion of the availability of this provision in the event that the Administrator desired to provide access to health-care benefits on a different, more restrictive basis than prescribed in chapter 17 of title 38.

For example, COBRA revised VA health-care eligibility so as to direct—by using the word "shall" in describing access to VA care rather than the word "may" as had been used previously—that VA-furnished hospital care be provided to specified categories of veterans. These changes were made after careful consideration and extensive deliberation in both Houses of Congress. Under present section 621, the Administrator has the authority to limit or deny health-care benefits expressly provided by Congress.

Committee bill

As introduced, section 6 of S. 6 would have limited the Administrator's authority to issue rules and regulations relating to the provision of medical care by the VA so as to eliminate the Administrator's authority to prescribe limitations on the furnishing of such care. In the Committee bill, this provision has been revised to limit, rather than eliminate, the Administrator's authority so as to restrict its exercise to times of national or regional emergencies other than periods of armed conflict, which are already provided for in present section 5011A of title 38.

Increases in Per Diem Rates for Care in State Homes

Section 310 of the Committee bill, which is derived from section 7 of S. 6 and from S. 216, would amend section 641 of title 38 to increase VA per diem payments to State Veterans' Homes, effective 30 days after the beginning of the first full month beginning after the date of enactment, to $8.70 from $7.30 for domiciliary care and to $20.35 from $17.05 and $15.25, respectively, for nursing home and hospital care. This provision also would authorize the VA to increase these rates annually, beginning in fiscal year 1989, by a percentage not greater than the percentage increase in the cost of care in VA general hospitals as calculated pursuant to section 620(a)(2), for the purposes of establishing the maximum amount the VA may pay for contract care in community nursing homes.

Background

The VA participates in two separate programs of assistance to State Veterans' Home hospital, nursing home, and domiciliary facilities—a program (under subchapter V of chapter 17 of title 38) of per diem payments for care provided to eligible veterans and a program (under subchapter III of chapter 81 of title 38) of matching grants for the construction, remodeling, or renovation of State Home facilities.

State Homes, originally operated entirely at State expense, were first established in the 1800's to care for disabled soldiers and sailors. In 1888, the Federal Government began to appropriate funds, $100 per year per veteran, for the 11 state programs, each with one domiciliary, to assist them with their costs of providing care and treatment. Subsequent legislation, in 1949, provided authorization to pay a portion of the cost for hospital care, and in 1964 the authorization was further expanded to include nursing home care. Currently, a total of 35 States manage 50 State Homes with a total of 18,431 beds providing hospital (689 beds), nursing home (10,686 beds), and domiciliary care (7,056 beds).

In 1960, the method of Federal assistance to State Homes was changed from a per annum rate to a per diem rate, with a per diem rate of $2.50 established for both domiciliary care and hospital care. With the inclusion in 1964 of nursing home care in the State Home program, the per diem rate of $3.50 was established for that level of care. The per diem rates have been periodically increased, and the present rates, which under Public Law 98-160, took effect on April 1, 1984, are $7.30 for domiciliary care, $15.25 for hospital care, and $17.05 for nursing home care.

Public Law 98-160 also included a provision requiring the Administrator to submit to the two Committees on Veterans' Affairs every 3 years a report on "the adequacy of the per diem rates in light of projections over each of the following five years of the demand on the Veterans' Administration for the provision of nursing home care to veterans eligible for such care." The initial, June 30, 1986, report included elements which suggest both that per diem rates are adequate and that an increase in rates may be appropriate. Thus, the report stated that current per diem rates did not seem to be inhibiting State Home construction activity on the part of States; however, the report also indicated that maintenance of the VA's percentage share of the cost of operating State Homes "over the next few years" may require a per diem rate increase.

Committee bill

Section 310 of the Committee bill would increase the per diem rates paid to State Homes from $7.30 to $8.70 for domiciliary care from $17.05 and $15.25 to $20.35 for nursing home and hospital care, respectively. Also, beginning October 1, 1988, the Committee bill would authorize the Administrator to increase the per diem rates whenever the Administrator determines, for the purposes of the VA's payment to community nursing homes, that the cost of care in a VA general hospital has increased. At such a time, the Administrator would be authorized to increase the State Home per diem rates by a percentage not greater than the percentage by which the Administrator increases the payment rate to community nursing homes.

Under current section 620(a)(2)(A), the Administrator may increase the per diem paid to community nursing homes for the care of veterans up to a level which equals 45 percent (or the amount equal to 50 percent of such cost, if such higher amount is determined to be necessary by the Administrator upon the recommendation of the CMD) of the cost of care furnished by the VA in a general hospital under direct VA jurisdiction. It is the Committee's view that the VA's share of the average cost of providing care in State Homes should—just as should the community nursing home care rate—keep up with the rising costs of providing such care. Providing such periodic increases in State Home rates should provide encouragement to States to take an active part in providing services to veterans.

In this regard, the Committee notes two critical factors which contribute to the need for an increase in the per diem rates for State Veterans' Homes and periodic, regular assessments of the costs of providing such care. First, the number of veterans age 65 and over is expected to increase from a September 1986 total of 5.5 million to a peak of 8.9 million in 1999, while the number of veterans 75 years old and older will grow from 1.1 million to 1.5 million by 1990 and then nearly triple over the next 15 years to a total of 4.4 million. The aging of the veteran population is expected to increase dramatically the demand for acute and long-term health-care services, and the State Home program is a very vital component of the overall effort to meet the demand. Second, since April 1984, the effective date of the last increase in per diem rates, inflation has diminished the ability of State Homes to provide care for eligible veterans. As evidenced by the 32.3-percent rise in the overall unadjusted Consumer Price Index (CPI) from April 1984 through June 1987, and the corresponding 85.6-percent increase for the medical care component of the CPI, the buying power of the Federal Government's per diem payment to the State Homes has been significantly reduced since the time of the last increase.

The Committee strongly supports the State Home program and its continuation as an important community link in meeting the needs of our aging veteran population, and believes that this increase in the per diem rates is fully justified in light of the importance of the State Home program in overall efforts to meet the health-care needs of the aging veteran population.

State Veterans Home Construction

Section 311 of the Committee bill, which is derived from section 2 of S. 1089, an Administration proposal, would amend section 5035(b) of title 38 to make technical adjustments to the provisions which were enacted as part of Public Law 99-576 establishing a priority system for awarding of State Home construction grants.

Background

Under current law, States must meet all the requirements of law and VA regulations before the Administrator may award a State home grant. Completion of these requirements—which include completion of all plans and specifications for the proposed project and obtaining bid tabulations from prospective contractors—is expensive and may account for as much as 10 percent of the grant request. In view of these costs and the uncertainty regarding the availability of Federal funding, many states have been reluctant to meet these requirements until notification is received from the VA that funds are available for the project. Once that notification occurs it often takes over a year for the requirements to be met and the funds to be released to the States. This results in the VA accumulating a significant unobligated balance at the end of the year. Additionally, under the new priority system, the VA may be unable to approve a grant in the next fiscal year even though a State had been notified that funds were available the previous fiscal year and had incurred significant costs in reliance on that notice.

Committee bill

The Committee bill would enable the Administrator to approve and obligate funds on a conditional basis for a State home grant for a project if the State has not met all the requirements for the grant. Specifically, the Committee bill would provide that if the Administrator determines that a State has submitted drawings and specifications for a project which are at least 80 percent complete, together with a timetable for the remaining specific actions, and that the project application provides that all remaining requirements will be met within 6 months, the Administrator would be authorized to make an award of a grant—but would withhold payment until all requirements are met.

The Committee bill modified the legislation as introduced to delete a provision regarding the July 1 to September 30, 1987, period under the program, which the Senate had already dealt with through section 301 of S. 477 as passed on March 31, 1987. The need for any legislative change in this regard expired on September 30, in any event.

Medicaid Treatment of Per Diem Payments to State Veterans' Homes

Section 312 of the Committee bill, which is derived from S. 1517, would amend section 641 of title 38 to preclude per diem payments made by the VA to State Veterans' Homes from being considered a "third-party liability" under the Medicaid program and, therefore, being deducted from Medicaid payments to State Homes.

Background

Under the State Home per diem payment program authorized by current section 641, the VA provides funds directly to State Homes to help meet the cost of care for eligible veterans in such homes. Per diem payments under this program are made at set rates for domiciliary, nursing home, and hospital care, but may not exceed one-half of the cost of the veterans' care in a State Home.

State Homes are established through legislation enacted by State legislatures, which also determine how the States will fund their share of the Homes' operation. Generally, that support is a direct appropriation from the State. Under such an arrangement, a Home's revenues usually consist of State appropriations, the VA per diem payments, and any payments required to be made by the patients. Legislatures may, however, choose to fund the Home's operation through the Medicaid program. Under arrangements currently carried out in four States, a Home's revenues would consist essentially of Medicaid and VA per diem payments.

Under the Medicaid program (carried out under title XIX of the Social Security Act (42 U.S.C. 1396–1396p)), payments are made in connection with the care of certain low-income individuals. The Federal and participating State governments share the program's costs by means of a variable matching formula depending, within certain limits, on per capita income.

Section 1902(a)(25) of the Social Security Act (42 U.S.C. 1396(a)(25)) requires that, in determining the extent of Medicaid assistance payable in an individual case, the State must consider whether there exists any "third-party" liability for the individual's care and services arising out of injury, disease, or disability and such third-party liability is to be considered "as a resource of the individual on whose behalf the care and services are made available." If a State discovers that a third party is in fact liable for some portion of a Medicaid patient's care and that it can reasonably expect to recover an amount exceeding the costs of recovery, the State must seek reimbursement from the third party to the extent of the third-party's liability.

The Office of the General Counsel of the Department of Health and Human Services, in a report released by then-HHS Secretary Heckler on May 9, 1985, and the VA's General Counsel, in an August 3, 1984, legal memorandum, have both expressed the view that VA per diem payments to State Homes must be treated as a "third-party liability" for purposes of Medicaid. As a result of these views, the State agencies which are entrusted with the responsibility of administering Medicaid are forced to reduce any Medicaid payments made on behalf of persons who are eligible veterans to a Home by an amount equal to the VA per diem payments made on behalf on such Medicaid-eligible veterans residing in the Home.

Following Secretary Heckler's report, on July 31, 1985, Senator Mitchell introduced S. 1536, a measure identical to S. 1517. This provision was reported favorably by the Committee on September 16, 1986, as section 209 of S. 2422, and passed by the Senate on September 30, 1986. However, agreement could not be reached with the House on this proposal, and it was not included in the legislation enacted as Public Law 99–576.

Committee bill

In the Committee's view, VA per diem payments should increase the resources available for furnishing of care to eligible veterans, and not simply serve to reduce the amount of any Medicaid payments to the Homes. That is why section 312 of the Committee bill would amend title 38 to preclude per diem payments from being considered a third-party liability under Medicaid and thus avoid the resultant decrease in revenues available to certain State Homes.

The Committee notes that, as was the case in 1986, only four states—Colorado, New York, Maine, and Wisconsin—currently utilize the Medicaid program to fund a portion of their share of their Homes' operations. The Congressional Budget Office estimates that enactment of section 312 would increase Federal Medicaid program costs by about $2 million annually. The States' costs would increase by a similar amount.

Therapeutic and Rehabilitation Revolving Fund Restoration

Section 313 of the Committee bill, which is derived from section 8 of S. 9, would modify the effective date as set forth in section 601 of Public Law 99-576, of the exemption of the Special Therapeutic and Rehabilitation Activities Fund (STRAF), a self-sustaining revolving fund, from sequestration under the Gramm-Rudman-Hollings (GRH) law (discussed above in the discussion of section 146 of the Committee bill). The effect of this provision would be to provide for the recovery for the STRAF of the fiscal year 1986 funds previously sequestered.

Background

Under section 618 of title 38, the VA operates the compensated work therapy (CWT) program under which VA patients, as part of their rehabilitation, perform services for which they receive a small payment. According to the VA, in a 1985 white paper, this program is designed to promote self-sufficiency in the participants by "developing increased feelings of self-worth and socialization, prevention of depression and regressive behavior, and acquisition of prevocational skills in order to reduce dependency on long-term VA hospitalization and other support from Federal, State and local government sources."

Participants in CWT learn work habits and vocational skills by working on projects under VA "contracts" with private industry or other sources and are paid wages commensurate with those paid in the community. These wages are derived from payments made by the private industry into a self-sustaining VA revolving fund of amounts payable to the patients as compensation for the work they perform. When the original GRH law, Public Law 99-177, was enacted, it was noted that this revolving fund could be affected in an adverse manner. Therefore, Congress enacted in Public Law 99-576, which was signed into law on October 28, 1986, a permanent exemption of the VA's STRAF from sequestration (codified in section 113(b)(2)(A) of title 38). The rationale for this exemption was that STRAF is self-sustaining, that is, it requires no appropriation of tax funds and does not contribute to the Federal deficit.

In proposing this exemption the House and Senate Veterans' Affairs Committees were under the impression that a retroactive effective date applicable to fiscal year 1986 was not necessary or advisable; the staffs were under the impression that the fiscal year 1986 sequestration meant only the imposition of caps on fiscal year

1986 STRAF obligations at levels 4.3 percent below the estimated levels of obligations in the absence of sequestration. Because the VA had informally advised the Committees that, although the caps were an inconvenience, they entailed no hardship or significant adverse programmatic impact in fiscal year 1986 and because the bill providing for the exemption was being enacted very near to or after the close of that fiscal year, a retroactive effective date was not expected to have any impact.

After final passage of Public Law 99-576, the Committee learned from the VA that GRH was being interpreted by the Office of Management and Budget in such a way as to require the VA to pay to the Treasury from STRAF the sequestered amount, $100,000, which represented the difference between the estimated obligation and the cap and that the VA General Counsel agreed with that interpretation. The effect of the one-time, $100,000 payment for a program with an annual operating budget of only about $2.3 million meant a significant administrative burden for a small, very worthwhile program which is a cost-effective means of helping disabled veterans regain economic productivity and become healthier, more self-sufficient individuals.

Committee bill

Section 313 of the Committee bill would mandate the return of the $100,000 by the Treasury to the STRAF by providing for the exemption of this fund to take effect retroactively with respect to fiscal year 1986, and would specifically direct the Secretary of the Treasury to take such action as is necessary to implement the fiscal year 1986 exemption for this revolving fund.

It is the Committees view that, if the fiscal year 1986 payment requirement had come to light before final action of the 1986 veterans legislation enacted as Public Law 99-576, those participating in the negotiations on that bill would have done everything possible to make the revolving fund exemption retroactive to fiscal year 1986 and thus would have avoided the requirement for the payment to the Treasury.

Rehabilitative Recreational Activities for Disabled Veterans

Section 314 of the Committee bill, which is derived from S. 1506, would amend section 612 of title 38 to authorize the VA to provide, or assist in the provision of, rehabilitative recreational activities to disabled veterans.

Background

Current law provides the VA with the authority to provide rehabilitative services to disabled veterans. These rehabilitative services can include recreational therapy. In addition to recreational activities within medical centers, the VA has used this authority to organize and conduct competitive events on a nationwide basis. For example, the National Veterans Wheelchair Games, now cosponsored by the VA and the Paralyzed Veterans of America, originated in 1981 at the VAMC in Richmond, Virginia.

Committee bill

The Committee bill would provide explicit authority for VA participation in national rehabilitative recreational activities and establish parameters for these activities. The VA would be authorized to provide these activities on its own, or in cooperation with a veterans' service organization named or approved under section 3402 of title 38. The activities would be required to be: (1) for the purpose of furthering the rehabilitation of disabled veterans; (2) available on a nationwide basis to disabled veterans; and (3) include in the participants a significant percentage of veterans eligible for VA rehabilitative services. The Committee intends for these requirements to ensure the rehabilitative nature of the activities and to focus the activities on disabled veterans while recognizing that it may be appropriate to allow limited participation by individuals not eligible for VA rehabilitative services.

The Committee bill also would authorize private contributions of funds, goods, or services in support of these activities and establish conditions under which the contributor may publicize the activity or the contributor's participation in support of the activity or both. The Committee notes that the National Veterans Wheelchair Games are almost entirely funded through private-sector contributions. The Committee applauds these sponsors for the contribution thay have made to the rehabilitation of disabled veterans and believes they should be able to make public reference to their contributions, but only on the condition that any publicity makes clear that the VA in no way endorses any private product or endeavor. The Committee endorses the view that recreation and athletic competition can be useful, or even essential, in the rehabilitation of disabled individuals and intends this section of the Committee bill to provide explicit authority for VA participation in such activities.

Pilot Program of Mobile Health-Care Clinics

Section 315 of the Committee bill would require the VA to implement a 2-year pilot program of four projects using appropriately equipped mobile vans to furnish health care in rural areas where veterans live at least 100 miles from the nearest VA health-care facility.

Background

In 1979, in one of the earliest special efforts to meet the needs of rural veterans, the Denver VAMC had utilized a 30-foot motor home equipped with medical supplies to provide outpatient and follow-up care to veterans living in the rural areas surrounding it. This so-called "MediVan", which was staffed by a physician, a health technician, and a clinic coordinator, traveled to sites between 50 and 75–80 miles from the Denver VAMC. Because medical records were maintained at the medical center and needed to be transported to the clinic site, walk-in patients were discouraged and the clinic was established on an appointment-only basis. Although this method of care was, according to the VA, acceptable to veterans, and was described as "comparable in cost to outpatient hospital visits" in the January 1983 issue of *Archives of Internal Medicine,* the program was discontinued after approximately two years in favor of permanent space being provided by a veterans' service organization. Other "traveling" follow-up clinics had been successfully implemented by other VAMCs including those in Cheyenne, Wyoming, and Fort Lyon, Colorado. In such programs, teams including physicians, nurses, and other health-care personnel have traveled to remote areas on a regular basis to see patients on a pre-scheduled basis at clinics held at veterans' service organizations' facilities.

For a number of years, the Committee has been concerned about the access veterans living in rural and remote areas have to VA health-care facilities and the most cost-effective approach to providing care for these veterans. On July 13, 1983, the Committee held a hearing to consider testimony on a measure, S. 523, introduced by Committee Member George Mitchell, to establish an experimental program of diagnostic services in a rural county of Maine. Testimony received at that hearing and additional information analyzed afterwards focused on what was known about access to health care in rural areas and the problems associated with travel distances, adverse weather conditions, and the capacity of health-care facilities to meet veterans' needs.

Underlying much of the discussion during and after that hearing was the lack of reliable data about the location, number, and distribution throughout the United States of veterans with varying eligibilities for VA health care. The Committee believed that the development of such statistics would help define and promote solutions to the preceived rural veteran health-care problem. As a result, provisions were enacted as section 202 of the Veterans' Health Care Act of 1984, Public Law 98-528, requiring the VA to submit two reports to the Committees on Veterans' Affairs. The first report, which was due on January 1, 1986, was to include the Administrator's findings on the extent of the need for VA health-care services in remote areas as well as the Administrator's findings and recommendations as to the advantages and disadvantages of alternative ways to furnish health-care services to eligible veterans in remote areas. The second report was due on July 1, 1986, and was to have described, in light of the first study, an experimental program that could be carried out in five remote areas to demonstrate alternative methods for the VA to provide health-care services to eligible veterans in such areas and the Administrator's recommendations about the desirability of carrying out such a program or a part thereof.

The first report, which was submitted in February 1986 and was entitled "Study of Health Care Services to Veterans Living in Geographically Remote Areas", found that while 97-percent of veterans live within 100 miles of a VA health-care facility, those in the more rural areas are proportionately higher users of VA health-care services. The study also found that there is a higher percentage of persons living below the poverty level in rural areas as compared to highly urbanized areas; that the further away veterans live from a VA facility, the less likely they are to travel great distances for care, particularly outpatient care; and that there are slightly more service-connected veterans per 1,000 population in the lesser populated areas. Although a number of alternative delivery modalities were described in the first report, the VA concluded that further assessment and evaluations at the local level would be needed prior to determining the need for further outreach to improve access in the most distant areas, as well as closer-in areas having special access problems.

In September 1986, the study, "Health Care for Veterans in Remote Areas: Second Report", was submitted to the Committees. After reviewing the results of the first study and describing current initiatives through which veterans in remote areas are furnished health care, the VA stated that it was not necessary to conduct experimental demonstration projects because DM&S "is able to meet its responsibility to remote veterans through existing forms of care and should continue its efforts to meet the most pressing needs across its spectrum of responsibilities." In addition, the VA made other recommendations including supporting the continuation of innovative approaches to furnishing health care for veterans in remote areas.

Following publication of that study, the Senate Committee on Appropriations, in its report accompanying H.R. 5313, the HUD—Independent Agencies Appropriations Act, 1987 (S. Rept. No. 99-487, p. 87), noted that "a significant portion of the population of the more rural States reside at dispersed locations where the average commute to a VA facility is over two hours." The Appropriations Committee noted the VA's lack of funds to open new medical centers or clinics in such areas and directed the VA to reassess the issue of access to health care for veterans living in remote areas and to consider several alternatives to address the problems. In this regard, the Committee noted that there appeared to be two basic approaches to addressing the health-care needs of veterans in more rural areas: (1) use of the mobile clinic concept, and (2) the development of cost-effective means of transporting veterans to VA health-care facilities.

In response to the Appropriations Committee's directive, the VA developed plans for two pilot demonstrations, one in Northern New Mexico and the other in Northern California, for providing health care to veterans in rural remote areas through the establishment of outpatient clinics in those areas. These two areas were chosen because they offer diverse settings for examining alternative modes of providing health-care services to veterans in rural areas. According to the VA, the initial demand for service at the New Mexico facility, which opened on August 10, 1987 has far exceeded expectations and it is assumed, based upon current usage, that the facility will be averaging 8,000–10,000 patient visits annually by the end of 1987. The Redding, California, facility is projected to average approximately 14,000 patient visits annually in fiscal year 1988 after opening at the end of 1987.

Committee bill

Although the Committee believes that the current California and New Mexico sites and methodologies chosen for study are appropriate and may offer helpful information regarding the provision of health care to veterans in rural and remote areas, it also believes that the use of mobile health-care clinics should be further explored.

Section 315 of the Committee bill would require the VA to implement a 2-year mobile health clinic pilot program of four geographically-dispersed projects using appropriately equipped mobile vans to furnish health care to veterans in rural areas at least 100 miles from the nearest VA health-care facility. It is the Committee's view that mobile clinics may offer the individualized types of services to localities indicated to be necessary and, therefore, recommended in the VA's above-noted February 1986 report. This Committee provision would further require that one project be established in each of four geographic regions—one in the Northeast, one in the South, one in the Midwest, and one in the West. The geographic dispersion is being mandated because of the Committee's view that, given the diversity of climate and geographical factors within this country, what is successful in one region may not succeed in another. Not more than $2.5 million annually could be expended on this program.

In addition, the VA would be required to submit, not later than 20 months after the beginning of the program, a report to the House and Senate Veterans' Affairs Committees on the VA's experience during the first 17 months of the pilot program. A final report, containing information and detailed breakdowns on services provided, costs, and client characteristics as well as the Administrator's evaluation of the program, would be required to be submitted to the Committees not later than 27 months after the beginning of the pilot program.

Finally, the Committee recommends that the VA use the vans to transport veterans traveling in connection with receiving health care, especially those needing special-mode transportation.

Mental Illness Research

Section 316 of the Committee bill would amend section 4101(c)(1) of title 38 to add mental illness research as a specific DM&S research mission—along with biomedical, prosthetic, and health-care services research.

Background

According to the October 20, 1985, Report of the Special Purpose Committee to Evaluate the Mental Health and Behavioral Sciences Research Program of the VA, which was chaired by Dr. Seymour Kety (hereinafter referred to as the "Kety report" and "Kety Committee", respectively), less than 10 percent of VA research resources are directed toward mental illness; in contrast, 40 percent of all VA bed-days are provided to veterans who suffer from mental disorders, including post-traumatic-stress disorder (PTSD), depression, alcoholism and substance abuse, Alzheimer's disease and other dementias. In 1983, one-third of all VA patients had a primary psychiatric diagnosis, and a great number of the rest also had significant psychiatric disorders, such as alcoholism or depression.

The report further concluded that educational funds, training stipends, research space, and staff positions for psychiatry were disproportionately low in the VA, resulting in high caseloads and diminished opportunities for research.

Although in the past there may have been too few qualified investigators or worthy research proposals that warranted funding, that is no longer the case. The Kety report found that there are many well-qualified investigators and excellent research proposals relevant to mental illness research which are not being funded.

The Kety Committee also recommended that "Centers of Excellence" be established as a cost-effective and rapid way to develop psychiatric research in the VA system. The report noted that the centers would produce new knowledge, provide research training opportunities on a competitive basis for mental health researchers, and eventually would generate well-trained clinical investigators who could then initiate research projects at other VA hospitals.

The Kety report stated that the VA's "failure" to develop appropriate quality and quantity of psychiatric research is most significant in the area of research training. Although 42 percent of all applicants for career development awards are funded, only 26 percent of psychiatrists who apply are funded. Moreover, the report concluded that many more mental-illness researchers are discouraged from applying for funding.

Finally, the Kety report recommended that the VA steadily increase its research budget for mental health and behaviorial sciences until it reaches a proportion of at least one-third of the total VA medical research budget.

The Committee has a particular interest in and concern about the incidence and treatment of PTSD in Vietnam veterans. In 1980, the American Psychiatric Association identified and classified PTSD as a specific set of conditions and symptoms occurring as the result of an emotionally traumatic event. In addition to exposure to combat situations during a time of war, PTSD can result from a variety of other experiences—for example, from violent criminal attacks, physical and mental abuse, natural and environmental disasters, work in jobs that involve routine exposure to traumatic situations, and hostage situations.

The Committee believes it is very important to investigate the origins of PTSD resulting from all causes and to determine better methods of diagnoses, intervention, and treatment. To that end, the Committee Chairman has urged the VA to increase its research efforts into the causes and treatments related to PTSD and to coordinate fully with the National Institute of Mental Health (NIMH) with respect to such research and the results thereof. Likewise, the Chairman has urged that the NIMH share expertise with the VA in order to advance research projects on PTSD as expeditiously as possible.

Committee bill

In order to improve treatment for mental illnesses within the VA and to encourage more research into such illnesses, the Committee bill would provide an express reference to mental illness in the title 38 description of the medical research mission of the VA. Although the Committee does not believe that funding for mental illness should necessarily be directly proportional to the prevalence of mental illness among VA patients, the Committee does believe that mental illness research has been historically underfunded and that the VA should take action to increase significantly funding for research on mental illness and continuing education and training for mental health researchers.

Noting that the VA has created research services for each of the categories of research mentioned in the statutory research mission description in section 4101(c)(1) of title 38 the Committee urges the Chief Medical Director to take administrative action to create a Mental Illness Research Service charged with directing and developing a program of research for the VA in the mental illness area. The creation of a separate service with its own budgetary allocation should help the VA more creatively pursue cost-effective treatment for its patients suffering from mental illnesses.

The Committee also urges the VA to establish three pilot Mental Illness Research and Education Centers (MIRECs), similar to the "Centers of Excellence" recommended by the Kety Committee. These MIRECs should be modeled after the VA's Geriatric Research and Education Clinical Centers (GRECCs). Each center would congregate a critical mass of investigators and would have a clear and focused clinical research mission focusing on one of the major categories of illness from which veterans suffer, such as schizophrenia, PTSD, and dementias. The Committee expects that such centers would provide state-of-the-art treatment, increase innovative basic and clinical research opportunities, and enhance and encourage continuing education and training in mental illness research.

Finally, in the context of developing this provision regarding mental illness research, the Committee became aware that the VA has altered its policy of providing full funding of scientically-approved research programs dealing with highly relevant or "high priority" issues—schizophrenia, alcoholism, aging, spinal cord and tissue regeneration, PTSD, and problems of female veterans. These high-priority programs are now being treated exactly like all other research programs and are subject to funding reductions based on priority score. Although the Committee recognizes the VA's need for flexibility in research funding, the Committee also believes that the VA should be placing major emphasis on research in areas of prime benefit to veterans and, therefore, strongly urges DM&S to restore the policy of full funding for high priority research, including mental illness research.

Report on Certain Activities of Medical and Other Health-Professional Schools Affiliated With the Veterans' Administration

Section 317 of the Committee bill, which is identical to section 10 of S. 6, would require a one-time report from the Administrator, due not later than March 1, 1988, on the VA's activities to promote increased efforts by affiliated schools in training health-care professionals to care for older patients and in research efforts into the aging process.

Background

It is abundantly clear to the Committee that a major public policy issue facing our Nation is how we will respond to the needs of our elderly citizens as the population ages. It has been estimated by the Census Bureau that by the year 2030, the proportion of the

U.S. population age 65 and older will have risen to nearly 22 percent from the current level of approximately 12 percent. Although there are many efforts—both governmental and non-governmental—underway at present seeking to address the many challenges associated with this fundamental demographic change, the Committee believes there is still a need for increased, focused efforts as we prepare to come to terms with the impact of the aging of our population.

Because veterans cluster in age groups related to the periods of major conflicts—World War I, World War II, the Korean conflict, and the Vietnam conflict in this century—trends relating to the general population are realized differently in the veteran population. In the area of aging, the change in the overall population, which will peak around the first third of the next century, will be accelerated in the case of veterans. The veterans of World War II, who make up 37 percent of the total veteran population, are already approaching an average age of 65, and the veterans of the Korean conflict are just behind them.

Because of the large numbers of veterans who are entering the age range with the greatest need for health and health-related services, the VA has been very active for a number of years in seeking ways to meet the needs of older veterans. In connection with these efforts, the agency has furnished a significant measure of care—on an inpatient, outpatient, and extended-care basis—to older veterans; has developed new approaches for furnishing such care, such as through the use of hospital-based home care, geriatric evaluation units, and adult-day health care programs; has trained health-care professionals in the care of older patients; and has carried out and funded research into the diseases and disabilities associated with aging and into the aging process itself.

Despite these many activities, however, the Committee is concerned that the VA may not be taking full advantage of the potential influence that it has to motivate health-care training institutions which are affiliated with the VA to increase their efforts in the areas of training health-care professionals in the care of older patients and research related to aging issues. Through its affiliation agreements, the VA has a significant opportunity to influence decisions made at affiliated institutions—at present 101 medical schools, 59 dental schools, and 850 other health-care professional schools. Certainly, there has been some progress at the schools affiliated with the 10 VA medical centers that have Geriatric Research, Education, and Clinical Centers—GRECCs—centers of excellence mandated by section 4101(f) of title 38, United States Code. In fact, that provision of law recognizes explicitly the need for participation on the part of the affiliated institution by specifying that a GRECC can be established only at a VA medical center which has arrangements with affiliated schools providing education and training in geriatrics and at which medical residents and nursing or allied health personnel receive training and education in geriatrics through regular rotation through the VA medical center.

In testimony submitted for the Committee's May 21, 1987, hearing, Dr. Robert N. Butler, Chairman, Department of Geriatrics and Adult Development, Mount Sinai Medical Center, New York, stated, "If the VA is to cope with the crisis from the impending cohort of aging veterans, it must use its leverage with its affiliated schools to expose many more doctors to the important issues in geriatrics. Medical doctors must recognize that during the next two decades, the majority of their practice will be for patients over 65 years of age."

Committee bill

The Committee bill would set forth findings of Congress regarding the need to prepare for the impact of the aging of the United States population and of the opportunity of the Veterans' Administration to play an important leadership role in that regard, particularly with reference to encouraging increased efforts by medical and other health-professional schools affiliated with the VA in training professionals to care for older patients and in research into the aging process and diseases associated with aging. In order to gauge the extent to which the VA has had an impact on affiliated institutions in regard to their training and research efforts in the area of aging and of the need for extension of legislative mandates such as those that apply to GRECC-affiliated institutions, section 317 of the Committee bill would require the Administrator to submit a report, not later than March 1, 1988, to the two Veterans' Affairs Committees setting forth detailed information with regard to such past, present, and planned efforts at affiliated institutions.

Part B—Health-Care Administration

Subpart 1—Health-Care Personnel

Organization of the Department of Medicine and Surgery

Section 321 of the Committee bill, which is derived from section 8 of S. 6, would amend section 4103(a) of title 38, to provide new flexibility in the appointment of individuals to certain positions in the CMD's office, and make various technical changes in the section.

Background

Section 8 of S. 6 is virtually identical to section 215 of S. 2422 as passed by the Senate on September 30, 1986. Unfortunately, the House and Senate Committees were not able to reach agreement on section 215 and thus it was not included in the measure that ultimately became Public Law 99-576.

The Committee is again acting on this provision because it remains convinced of the need to provide the Administrator with the flexibility to appoint certain individuals with specified qualifications to important management positions within DM&S.

Committee bill

The Committee bill would authorize the Administrator to appoint, in addition to physicians, certain non-physician health-care professionals—dentists, registered nurses, optometrists, pharmacists, podiatrists, and psychologists—to various positions in the CMD's office. These non-physician professionals would be made eligible to serve as Deputy CMD and Associate Deputy CMD. In addition, these professionals—including dentists, who are already eligible—could be appointed to the positions of Assistant CMD (ACMD) and Medical Director. Not more than two ACMD positons may be filled by individuals who are qualified solely because they had served as Directors of VA health-care facilities. The Committee notes that these amendments do not mandate any change from the current practice. Rather, the Committee's intent is to remove some statutory restrictions on making appointments of individuals to the CMD's office.

In addition, the Committee bill would require that all individuals appointed to positions in the Office of the CMD be qualified in the administration of health services. The Committee intends that this qualification could be gained through either formal education or relevant in-service training combined with on-the-job experience.

Finally, since an administrative reorganization initiated by the CMD, it was no longer necessary to authorize the establishment of a second Associate Deputy Medical Director, the provision so authorizing in S. 6 as introduced was not included in the Committee bill.

Title 5/Title 38 Personnel Hybrid Expansion

Section 322 of the Committee bill, which is derived from section 2 of S. 1195, would move VA pharmacists and occupational therapists into the so-called title 38/title 5 "hybrid" category under which the agency may use title 38 appointment, pay, and promotion policies for specified employees employed under the title 5 personnel system.

Background

Health-care personnel working in the VA's Department of Medicine and Surgery (DM&S) are presently employed under one of two personnel systems. Under current law, physicians, dentists, nurses, optometrists, podiatrists, physicians' assistants, and expanded-function dental auxiliaries are employed under a special DM&S personnel system under title 38, United States Code. This system was established in 1946 when DM&S was first established by statute as a separate department within the VA. All other health-care personnel working in DM&S are employed in the regular civil service under title 5, United States Code.

The title 38 personnel system was established because of concerns that the regular civil service system was not flexible enough to permit the VA to hire direct health-care personnel in a timely fashion or to specify the terms and conditions of their employment in such a way as to facilitate the management of the provision of health care. Although there are many parallels between the title 38 personnel system and the civil service system, there are some significant differences, and it is generally agreed that the title 38 system has served the VA's needs very well.

In 1983, the Committee proposed, and the Congress created in Public Law 98-160, a title 38/title 5 "hybrid" category in order to address the need to improve the VA's ability to attract and retain certain health-care personnel—namely, registered respiratory therapists, licensed practical or vocational nurses, and physical therapists—as to which the VA was experiencing significant shortages. Under the hybrid approach the Administrator has specific authorities as to these occupations for determining the qualification of applicants, for appointing individuals to positions in DM&S, for advancing and promoting individuals, and for setting rates of pay including both basic pay and special pay for work outside of the regular workday or workweek.

Although those health-care personnel remain under the title 5 personnel system, the Administrator has the same greater flexibility as provided under the title 38 personnel system with regard to hiring practices and setting pay rates. For instance, the Chief Medical Director can approve special pay rates for hybrid and title 38 employees, wherease special rates for title 5 occupations must also be approved by the Office of Personnel Management. Another advantage of the hybrid title 5/title 38 category is that those employees are not prohibited from outside employment as are title 38 employees. A third advantage is that the VA can apply title 38 features selectively and apply them only at certain stations.

At the end of 1986, the VA conducted an extensive survey to assess recruitment and retention needs among several non-title 38 VA health occupations, including pharmacists, physical therapists, and occupational therapists, as well as nurses. The report, entitled "1986 Survey of Health Occupational Staff", was conducted in order to gather more concrete information about the staffing conditions of various professions within the VA system and to identify the geographic and personnel areas which are experiencing particular recruitment and retention difficulties. In addition, the survey identified factors that VA facilities believe place them at a competitive disadvantage with non-VA hospitals and which may significantly contribute to certain high VA vacancy and turnover rates.

In general, the data indicate that pay is a main factor in many facilities' inability to attract and retain health-care professionals. Certain fringe benefits, particularly relating to educational opportunities, were also cited as being far more generous in the private sector, and as, therefore, being an area, especially as to nurses, where the VA is at a serious competitive disadvantage.

Specifically, the 1986 VA Health Occupational staff survey found widespread recruitment and retention problems among pharmacists and occupational therapists, both of whom are currently under the title 5 personnel system. More than 52 percent of VA medical centers were reported as experiencing difficulty in recruitment and retention of pharmacists. The turnover rate for pharmacists was 22.6 percent—nearly 1 out of every 4 pharmacists leave the VA annually. That results in disruption of critical pharmacy services to inpatients and outpatients as new pharmacists are recruited and trained. Agency-wide losses exceeded gains by 51 pharmacists for a new loss rate of nearly 2 percent and the vacancy rate was reported to be 2.7 percent as of December 1986.

Losses of pharmacists were reported to be primarily concentrated in the mid-Atlantic states, in Florida, and in Wisconsin. This high number of losses nationwide has resulted in nearly 40 percent of facilities using alternative methods of coverage—additional shifts, overtime on recurring bases, and, most troubling, employing people in other occupations to provide coverage. More than 80 percent of the respondents to the VA survey stated that pharmacists working in non-federal medical facilities receive salaries that are higher than those earned by VA pharmacists performed comparable work.

Likewise, the survey found that the VA is experiencing difficulties recruiting and retaining occupational therapists (OTs). Overall the VA experienced a net loss rate of 5 percent for OTs. The vacancy rate for OTs in the VA is 9.2 percent with a turnover rate of 23 percent—again about 1 in 4 each year. VA facilities report that nearly 34 percent of OTs who left the VA did so for higher pay.

The Committee is very concerned that continuing high turnover rates will result in lowered quality of care for veterans. There is no substitute for the experience that comes from extended service, and there is concern that some of the best health-care personnel may be leaving VA medical centers for other employment. In addition, high turnover rates are unnecessarily costly because of the extra expense associated with training new employees. Finally, it is disadvantageous to veteran patients for vacancies to go unfilled for long periods of time. The Committee believes that the VA must have better tools, including providing competitive salaries and benefits, to be aggressive in recruiting the very best people into the VA system and ensuring that the VA remains an attractive employer so that those individuals want to stay.

Committee bill

In response to the documented recruitment and retention problems, section 322 of the Committee bill would amend certain sections of chapter 73 of title 38 in order to move pharmacists and OTs into the title 38/title 5 hybrid category. In times of critical shortages and scarce personnel funding, the VA must be able to respond quickly and effectively to attract new professionals into the VA system and to target those efforts to the facilities most in need. Although the hybrid category has certainly not solved all of the recruitment and retention problems for physical therapists, licensed practical or vocational nurses, or registered respiratory therapists, it has helped, and the Committee believes it will also help attract pharmacists and OTs to the VA and prevent further damaging attrition.

Disciplinary Matters Involving Hybrid Employees

Section 323 of the Committee bill would amend section 4106(g) of title 38 to provide that all matters relating to adverse actions, disciplinary actions, and grievance procedures involving title 38/title 5 hybrid employees will be resolved in accordance with the provisions of title 5 as though the employees in question were appointed under title 5.

Background

The hybrid category of VA health-care employees was first created in 1983 by Public Law 98-160. As was discussed above in more detail, health-care personnel in this category remain under the title 5 personnel system but the Administrator has the same greater flexibility as provided under the title 38 personnel system with regard to hiring practices and setting pay rates.

As a reflection of the intent of the Congress that hybrid employees remain in title 5 for all purposes except for the purposes specified, the Explanatory Statement which the two Committees on Veterans' Affairs included in the Congressional Record (see page H9001 of the Congressional Record, November 2, 1983 and page S15357 of the Congressional Record, November 3, 1983) during final debate on the legislation that was enacted as Public Law 98-160 included the following statement:

> The Committees note that it is not the intent of the provisions of this legislation relating to the three DM&S occupations involved to diminish or impair in any way the rights and protection guaranteed the employees in those occupations under the express provisions of Chapter 71 of Title 5 relating to Federal labor-management relations.

However, the Committee learned from two witnesses at the Committee's May 21 hearing—those representing the American Federation of Government Employees (AFGE) and the National Federation of Federal Employees (NFFE)—that employees in occupations in the hybrid category were not being accorded protection that were available to title 5 employees in grievance and disciplinary matters. The witness representing AFGE expressed that organization's concerns as follows:

> In 1983, Congress removed some VA employees (LPNs) from the pay provisions of Title 5 so that recruitment and retention problems could be more adequately addressed. However, the language was so broad that it has been misinterpreted by the VA to exclude the employees from the labor-management provisions of Title 5. The end result of Congressional efforts to address the pay problems of these employees has been to deny these employees the protections granted to *all* other professional employees in the federal government.

The NFFE witness expressed similar concerns as follows:

> NFFE represents many of these so-called "hybrid" employees. We have found that although the category was intended to benefit certain health care personnel, it has instead been used to deny them the rights granted under Title 5. The Veterans' Administration has attempted to cover the "hybrid" employees under the Peer Review Boards and to deny them the right to follow negotiated grievance procedures.

In response to questions at the May 21 hearing and in follow-up submissions, the VA acknowledged that there is some confusion regarding the rights available to hybrid employees in areas relating to labor-management relations. According to the VA, it has been the agency's position that, in general, these employees retain the rights provided by Title 5 except for matters as to which the VA has exercised Title 38 authorities to appoint, pay, or promote such employees. In addition, the VA noted that there has been some confusion regarding these employees right to appeal adverse actions to the Merit Systems Protection Board, with two Administrative law judges refusing to accept such appeals and one judge accepting an appeal. The VA expressed the view that these appeals should be accepted by the MSPB.

Committee bill

In order to resolve this confusion and to reaffirm the Committee and the Congress' original intent with reference to the employees in the occupations included in the hybrid category, section 323 of the Committee bill would amend section 4106(g) of title 38, the basic authority for appointing individuals to hybrid positions, to specify that, notwithstanding any other provision of federal law, matters concerning adverse actions, disciplinary actions, and grievance procedures involving individuals appointed to hybrid positions will be resolved as though the individuals were appointed under title 5. Thus, these individuals will have the full panoply of rights available to title 5 employees for the resolution of grievance and disciplinary matters including, for those in recognized bargaining units, access to negotiated grievance procedures involving outside arbitration. The Committee notes that section 322 of the Committee bill, which would expand the title 38/title 5 hybrid category—to include pharmacists and OTs in addition to registered respiratory therapists, licensed practical or vocational nurses, and physical therapists.

Disciplinary Actions and Grievances

Section 324 of the Committee bill, which is derived in part and with substantial changes from S. 1136, would amend section 4110 of title 38 so as to provide that the procedures set forth in title 5, United States Code, for the resolution of specified lesser disciplinary actions (admonishments, reprimands, suspensions of 14 days or less, and transfers not involving loss of grade) would be used in cases involving title 38 personnel (including the use of a negotiated grievance procedure involving an appeal to an arbitrator). This section would further amend chapter 73 of title 38 so as to create, in title 38, a grievance-resolution process that parallels that available to title 5 employees.

Background

When the VA's Department of Medicine and Surgery was established in 1946, the Congress created a separate personnel system, distinct from the general civil service system, in order to provide the VA with greater flexibility in recruiting and employing health-care professionals. It was the view at that time that the civil service system was too cumbersome to permit the timely hiring that was felt to be necessary in order to enable the VA to meet the health-care needs of the returning World War II veterans and also that the other attributes of the civil service system were not compatible with running a large health-care organization. The elements of this system, which are set out in chapter 73 of title 38, United States Code, and in regulations and guidelines issued by the VA, have generally served the purpose of enabling the VA to employ needed health-care professionals and to operate DM&S.

Among the areas addressed in chapter 73 are those relating to employer/employee relations, such as those involving terms and conditions of employment (including how employee grievances over such terms and conditions are resolved) and disciplinary procedures. Specifically, current section 4108(a) gives the Administrator exclusive authority over the conditions of employment of title 38 personnel "[n]otwithstanding any law, Executive order, or regulation", and current section 4110 sets out the process by which disciplinary actions involving title 38 employees are to be conducted.

Many of these provisions date back to 1946 and, although there have been many significant changes in employee relations in the intervening years—most especially, the enactment in 1978 of the Civil Service Reform Act (CSRA), Public Law 95-454—VA authorities and practices have remained largely unchanged. In fact, the only significant attempt to reform this system was made in 1976 when this Committee reported and the Senate passed provisions in S. 2908 to clarify and expand the procedural rights of title 38 employees. Unfortunately, because there was significant misunderstanding and confusion about the Senate-passed provisions, those provisions were not included in the legislation that was ultimately enacted as Public Law 94-581.

Meanwhile in the 1978 CSRA, other federal employees gained significant new rights in CSRA to negotiate with regard to terms and conditions of their employment and to utilize new methods to resolve grievances, including through negotiated grievance procedures and binding arbitration. Title 38 employees, by way of contrast, remain limited by section 4108 to whatever rights the Administrator is willing to accord to them and have been unable to negotiate grievance procedures comparable to those available to other federal employees. Likewise, under section 4110, all disciplinary actions involving title 38 employees, however minor, must be heard by a disciplinary board of 3 to 5 employees, a trial-like adversarial process that frequently takes many months to reach a resolution and from which the only appeal available is an internal VA action, with no recourse to outside judgment except in a court action. Civil service employees, on the other hand, have various methods for contesting disciplinary actions, both within and outside of their particular agencies.

In recent years, challenges has been brought, including by the American Federation of Government Employee (AFGE) and the National Federation of Federal Employees (NFFE), to the legality, in light of the enactment of CSRA, of certain attributes of the separate VA personnel system, particulary to those relating to the resolution of employee grievances and disciplinary actions. These challenges have been based on the theory that CSRA established government-wide procedures in the area of labor-management relations and, in so doing, superceded VA-specific laws. Although this legal theory was accepted in some cases before the Federal Labor Relations Authority (FLRA) involving VA disciplinary procedures in which the FLRA ruled that the VA was obligated to adhere to CSRA procedures, these results were reversed on appeal to Federal appellate courts.

In the first such case, which involved a challenge by employees at the VA Medical Center in Minneapolis, Minnesota, the FLRA held that the VA was required to bargain over certain proposals advocated by the AFGE local at the medical center relating to the resolution of disciplinary and adverse actions. *AFGE, Local 3669, AFL-CIO and Veterans' Administration Medical Center, Minneapolis, Minnesota,* 4 F.L.R.A. No. 53 (1980). On appeal to the U.S. Court of Appeals for the 8th Circuit, the court set aside the FLRA decision, noting that the enactment by Congress in 1980, after the enactment of CSRA, of section 4119 of title 38 results in the VA-specific law remaining exclusive. *Veterans' Administration Medical Center, Minneapolis, Minnesota v. Federal Labor Relations Authority,* 705 F.2d 953 (1983). Section 4119, which was enacted as part of Public Law 96-330, states, in relevant part, that:

> [n]otwithstanding any other provision of law, no provision of title 5 or any other law pertaining to the civil service system which is inconsistent with any other provision of [subchapter I of chapter 73] shall be considered to supersede, override, or otherwise modify [the VA provision].

In a subsequent case involving a challenge by the National Federation of Federal Employees (NFFE) to the refusal of VA management officials at the Northport VAMC to bargain over proposals for procedures relating to disciplinary and adverse actions involving title 38 employees, an FLRA decision requiring such negotiation was reversed by the U.S. Court of Appeals for the 2nd Circuit which agreed with the holding of the 8th Circuit in the *Minneapolis VAMC* case. The court noted that section 4119 "provides that a title 5 section can override a title 38 section only by specific reference in the text of the statute to the title 38 section." *Veterans' Administration Medical Center, Northport, New York v. Federal Labor Relations Authority,* 732 F.2d 1128, 1131 (1984).

Although the *Minneapolis* and *Northport VAMC* cases resolved the issue of whether provisions of title 38 are exclusive in matters relating to disciplinary and adverse actions neither case dealt with whether the VA is under an obligation to bargain with title 38 employees in collective bargaining units with reference to conditions of employment and agency grievance procedures. In at least two cases—*Colorado Nurses Association and VA Medical Center, Ft. Lyon, Colorado,* 25 F.L.R.A. No. 66 (Feb. 20, 1987) and *Veterans' Administration, Washington, D.C., and American Federation of Government Employees, AFL-CIO,* 26 F.L.R.A. No. 33 (Mar. 17, 1987)—the FLRA has ruled that the VA has a duty under the CSRA to bargain over conditions of employment. Both cases have been appealed to the U.S. Court of Appeals for the District of Columbia Circuit.

Against this background of litigation relating to personnel matters affecting title 38 employees, the Committee, at the May 21 hearing, considered a number of Administration-proposed measures relating to the current title 38 system. One of those measures, S. 1136, would amend section 4110 so as to limit the types of proposed disciplinary actions that would have to be heard by a disciplinary board to those involving proposals of removal, suspension of more than 14 days, or demotions involving loss of grade or pay. All other disciplinary matters would have been excluded from the section 4110 procedure and, as to those, the VA transmittal letter stated the intent to establish "administrative appeal or grievance procedures" and made the following points in support of the proposal to revamp section 4110:

> The current disciplinary board system has proven to be an overly centralized, time consuming and highly legalistic one, with an average case taking between six months and one year to complete. As the volume of disciplinary actions increases, further processing delays are incurred. The effect of the length and complexity of the current disciplinary board system has been to diminish the use of disciplinary actions as a means of ensuring high standards or professional performance in the medical centers. The complexity and its attendant cost act as a disincentive for management to take less that drastic disciplinary measures, serving to impede the principle of progressive discipline. The current disciplinary board system compares poorly with the Civil Service Reform Act, which has established expeditious mechanisms to process title 5 disciplinary actions. There is no reason why title 38 disciplinary actions should take longer to be resolved than those in effect for title 5 employees.
>
> Fairness requires that the two systems be reasonably equal in timeliness.

The VA made similar points in the agency's testimony at the May 21 hearing.

Other witnesses at the May 21 hearing, in their comments on S. 1136, were critical of the current disciplinary board practice under section 4110. For example, Dr. Peter Hawley, representing the National Association of VA Physicians—NAVAP—expressed his organization's views as follows: "The Agency's quasi-military personnel system is itself the cause of much disenchantment. An individual quickly finds out how few rights one really has when the Agency itself is prosecutor, judge, and jury." Dr. Hawley also stated that "[u]ntil all review or appeals of disciplinary actions are removed from the precincts of the Agency and are put in the hands of a truly impartial body, we must conclude that VA physicians remain subject to capricious or vindictive action." In a June 15 letter which followed up on NAVAP's testimony, Dr. Hawley wrote that his organization "must be adamantly opposed to S. 1136".

John Mulholland, AFGE Director of Field Services, expressed AFGE's view of section 4110 procedures that "current practices are unfair and are perceived as unfair by the employees." Tricia Thomas, NFFE Legislative Director, made the following points in expressing her organization's views on the title 38 personnel system:

> We also believe that many of the Veterans' Administration's staffing problems are rooted in their outdated and their generally inequitable personnel system . . . [Title 38 employees] must submit to highly subjective Peer Review Boards or Disciplinary Boards which often deny employees adequate review or due process. . . .

* * * * * * *

> The Veterans' Administration's Disciplinary Boards are, for the most part, unpopular among the agency's employees who view the Boards as biased and lacking credibility. If the VA is truly interested in improving the disciplinary structure of the agency, we strongly recommend substituting the grievance and appeal mechanisms provided under Title 5, U.S.C., for those provided under Title 38, U.S.C.

Committee bill

In view of the concerns expressed by the VA about the current 4110 procedures, the criticism from various witness about the fairness of those procedures and the overall title 38 personnel system, and the ongoing, costly, and time-consuming litigation over issues relating to the relationship between title 5 and title 38 provisions relating to personnel matters involving title 38 employees, the Committee sought to develop a legislative solution that would address the many and varied concerns.

The effort to develop the provisions in section 324 of the Committee bill, which included significant consultation with many concerned parties, was carried out with two fundamental, and sometimes conflicting, principles in mind—first, the separate title 38 personnel system for DM&S generally serves a valid and valuable purpose of permitting the VA to staff and manage a very large, complex, healthcare system and, as such, should be maintained; and, second, as the Congress recognized with the enactment of the CSRA, there can and should generally be significant opportunity for employees to have disciplinary actions and grievances related to their employment resolved in a timely fashion with an opportunity for outside review.

With these principles in mind, section 324 of the Committee bill would amend section 4110 so as to remove from the coverage of that section disciplinary actions involving lesser proposed penalties—specified as suspension for 14 days or less, reassignment or reduction in rank without a reduction in basic pay, reprimand, or admonishment. All other disciplinary actions would remain covered by section 4110.

This approach, of specifying those matters which would be excluded from coverage, was adopted by the Committee rather than the approach advocated by the Administration and included in S. 1136 as introduced. That approach entailed expressly limiting the applicability of 4110 disciplinary boards to matters involving title 38 personnel in which significant disciplinary penalties—removal, suspensions of more than 14 days, or demotions involving loss of grade or pay—are proposed. The Committee choose to exclude matters from coverage of 4110 boards so as to be clear that any matters not specified would remain covered by section 4110. For example, because of the current VA practice of treating any proposal to remove a title 38 employee's clinical privileges as the same as a proposed removal, current 4110 procedures would continue to apply in such cases.

The Committee bill would also make one further substantive change to section 4110 derived in part from the Administration bill. Under current law, the CMD appoints disciplinary boards. The Committee bill would authorize the CMD to delegate this authority to some other DM&S official with the limitation that the official to whom the authority is delegated cannot be involved in deciding whether to file charges against the employee or be subordinate to any charging official.

For the disciplinary matters specified in the Committee bill which involve lesser proposed penalties, the Committee bill would provide that a title 38 employee would be entitled, in lieu of a 4110 proceeding, to a process which would include (1) advance written notice which sets forth the specific reasons for the proposed action; (2) a reasonable time to answer the notice, either in writing or orally, including time to furnish affidavits and other documentary evidence in support of the answer; (3) a chance to be represented by an attorney or some other representative; and (4) a written decision, which would include the reasons for the decision, at the earliest practicable time. These procedures are generally the same as are provided, pursuant to section 7503(b) of title 5, United States Code to all title 5 employees in such disciplinary proceedings.

The Committee bill also would provide two methods by which title 38 employees could gain a review of a decision on such a specified lesser disciplinary matter. These two methods are either an agency review procedure established by the Administrator or a negotiated grievance procedure which would include binding arbitration. Appeals from an arbitrator's decision to the Federal Labor Relations Authority would be authorized.

The Committee bill would specify that any agency review procedure established by the Administrator would have to include (1) an informal review of the decision on the disciplinary action by a VA official of a higher level than the official who made the original decision and a prompt decision following that review; (2) a right to have the matter reviewed further by an impartial examiner from within the VA who would have to submit a prompt report of findings and recommendations; and (3), a prompt review of those findings and recommendations, as well as any comments the employee or the agency or both wishes to make on the findings and recommendations, by an agency official at a higher level than the one who carried out the first informal review. These procedures are generally similar to ones currently provided by the VA through internal agency guidelines.

The overall impact of these change would be to make parallel to personnel procedures available to title 5 employees the VA's procedures for personnel actions involving title 38 employees involving the specified lesser disciplinary actions and grievance procedures.

Recruitment and Retention of Registered Nurses, Physical Therapists, and Other Direct Patient-Care Providers

Sections 325, 326, 327, and 329 of the Committee bill, which are derived from S. 1195, would amend section 4107(e), subchapter IV of chapter 73, and section 4112 of title 38 to improve the VA's recruitment and retention of certain health-care personnel. Specifically, these provisions would, first, require the VA to pay nurses who work on Saturdays the same premium pay currently applicable to work on Sunday; second, establish a tuition reimbursement program for full-time nursing personnel, or when needed, for other full-time health-care personnel, for academic courses leading toward completion of any degree program in nursing or a field related to nursing, or in other appropriate degree-granting fields for other personnel, giving first priority to those with 2 years service within the VA whose performance is superior, and second priority to those with 2 years of service; third, make eligible for the Health Professional Scholarship Program, in addition to physicians and nurses, physical therapists and other DM&S personnel who provide direct patient-care services or services incident to direct patient-care services, require a minimum of 2 years of obligated service for each one year of scholarship aid, and give priority for scholarships to nurses seeking a fourth year of baccalaureate education; and, fourth, require that the Chiefs of Nursing Service or their designees be members of VA health-care facilities policy-making and fiscal committees.

Section 327 of the Committee bill, which is derived from S. 713, would amend subchapter I of chapter 73 of title 38 to authorize a bonus of up to $20,000 over four years to be paid to full-time registered nurses or other full-time health-care personnel (except dentists and physicians) who agree to work or are presently working in the VA within a specific geographic area or in a professional specialty experiencing recruitment and retention problems.

Section 332 of the Committee bill would require the VA to study and submit a report on various matters related to enhancing recruitment and retention of health-care personnel within the VA.

Background

The problem of recruiting and retaining sufficient health-care personnel is one which has occurred frequently in recent years both within and outside of the VA. In August 1980, in response to serious problems the VA health-care system was facing in staffing at its facilities, especially with regard to physicians, many important provisions designed to improve the VA's ability to recruit and retain high quality health-care personnel were enacted in the Veterans' Administration Health Care Amendment of 1980, Public Law 96-330. In large part because of the provisions in Public Law 96-330, the VA has been successful in providing attractive career options for physicians and the agency's record in that area has improved significantly. Several provisions were enacted pertaining to the recruitment and retention of registered nurses (RNs), including (1) improved pay practices for nurses, (2) the establishment of the Health Professionals Scholarship Program, and (3) a requirement for pilot programs and a study of problems VA medical centers were having in recruiting and retaining nurses.

At a hearing held by the Committee on April 21, 1982, witnesses representing the VA, veterans' service organizations, and the Nurses Organization of the Veterans' Administration (NOVA) testified with respect to the RN shortages in the VA health-care system, and gave suggestions of ways to alleviate the problem so that DM&S could become more competitive with the private sector. Ms. Barbara Chambers, R.N., then-president of NOVA, in response to written questions by then-Chairman Simpson following that hearing, stated that non-nursing hospital personnel needed to be sensitive and more receptive to nursing needs. On this point she stated, "Collaborative practice committees—having physicians and nurses work together on committees to problem solve demonstrates that nurses are valued." She also referred to the need to explore creative scheduling programs for staff, employee medication discount programs, day-care programs for the children of VA personnel, improved patient support services, and increased nursing input into the decisions made by the major policy-making committees within VAMCs.

Following the 1982 hearing, the Committee reported S. 2385, legislation from which provisions ultimately enacted in Public Law 97-251 were derived. That law included provisions which authorized expanding the VA's Health Professional Scholarship Program to include scholarships for VA nurses and physicians attending school on no less than a half-time basis and authorized the Administrator, when necessary for recruitment and retention purposes, to modify various rates of special pay for nurses and other health-care personnel.

On February 26, 1984, the VA submitted the report, entitled "Nurse Recruitment and Retention in the Veterans Administration," which was required by section 118 of Public Law 96-330. This report included a nationwide survey of VA nurses and nurse recruiters focusing on working conditions and other factors which affected job satisfaction and the results of a pilot program which explored administrative actions to overcome recruitment and retention difficulties. This study supported results of earlier surveys made in the 1960's and 1970's, by the VA which noted that demanding work schedules, inadequate staffing, and lack of opportunities for continuing education were seen as important sources of dissatisfaction for VA nurses. Fifteen VA recommendations were included in the report, including those for (1) monitoring and adjusting special salary rates and various pay options to ensure that VA pay rates are competitive with community rates; (2) providing consistent support services by personnel other than physicians and nursing staff; (3) developing staffing patterns to eliminate rotation to different tours of duty; (4) ensuring flexible work schedules including every other weekend off for nursing personnel; (5) offering tuition reimbursement to nurses enrolled in courses which enhance their work performance; and (6) funding innovative projects to enhance recruitment and retention.

Although several of the fifteen recommendations have been implemented in whole or part, a considerable number have not come to fruition, in part, perhaps, because the nursing shortage of the early 1980's began to ease by the time of the study's publication in 1984.

In 1986, VA and non-VA sector health-care facilities again began to experience an increasing shortage of registered nurses and other skilled health professionals. Recently, for example, the California Association of Hospitals and Health Systems (CAHHS) reported that the vacancy rate for all health-care personnel in California increased by 50 percent, from 4.2 percent in 1985 to 6.3 percent in 1986. The highest vacancy rate reported by CAHHS was 11.8 percent for physical therapists (PTs) while the vacancy rate for RN's was 8.9 percent.

In the DM&S report entitled "1986 Survey of Health Occupational Staff", noted earlier in the discussion of section 322 of the Committee bill, the VA reported regional recruitment and retention difficulties. As noted earlier, the VA results were similar in many respects to the CAHHS results, with the highest vacancy rate of any health profession in the VA occurring with respect to PTs. Nearly 58 percent of responding VA health-care facilities stated that they were having difficulty recruiting and retaining PTs. The 1986 survey reported that the overall vacancy rate for the Nursing Service nationwide was 0.8 percent, with a turnover rate for the full Nursing Service of 16.6 percent. The vacancy rate for RNs was relatively low, 0.2 percent, and the rate for licensed practical nurses was 9.3 percent. However, it should be noted that these were net vacancy rates for the entire VA system. Since some facilities reported employing many more nurses than they have authorized positions for, the net vacancy rates do not necessarily reflect the severity of the shortage problem at many VA medical centers throughout the country. Among facilities reporting vacancies, rates ranged from a low of 0.6 percent to a high of 19.2 percent. Moreover, shortages are not evenly distributed throughout the country nor uniform in every nursing specialty. Facilities in California, Arizona, Ohio, and the mid-Atlantic states reported the highest net losses. In northern California there are serious shortages of intensive care nurses.

At the Committe's May 21, 1987, hearing, witnesses representing the VA, nursing organizations, and veterans' service organizations testified about the cause of the nursing shortage, its effect upon patient care, potential solutions, and current strategies for resolving the problem. Many of the strategies and solutions recommended at that hearing were similar to those suggested during the 1982 hearing and included in the VA's 1984 mandated report. Specifically, the testimony showed that there was a 13.4-percent decrease in nursing school enrollments over the previous two academic years, that the numbers of first-time, full-time, 4-year college freshmen indicating a desire to enter nursing dropped from 42,000 in 1983 to 19,800 in 1986, and that the vacancy rate in hospitals for registered nurses more than doubled between 1985 and 1986. Many suggestions were made by witnesses to address this problem, including enhancing the work environment and reward system for nursing, promoting public understanding of nursing as a respected, desired field of endeavor, increasing funds for nursing education, enhancing the position of nurses in the workplace, and funding special projects to demonstrate effective recruitment strategies for RNs in health-care institutions.

One witness at the hearing, Dr. Howard Green, representing the VA Chief of Staff, both during the hearing and in response to written questions, described a unique program being planned at the White River Junction, Vt., VA Medical Center. In cooperation with Vermont College, which will provide professors to teach the classes, the medical center will conduct courses leading to a degree in nursing, pay the tuition costs for full-time employees, and allow its employees to take time off from work—with pay—to attend class. This program, according to Dr. Green, is intended both to help the VAMC recruit nurses and also benefit Vermont College by helping to boost its declining enrollment. Later it was reported that, from the time the program was first announced in July, the White River Junction VAMC has filled nine of sixteen nurse vacancies and all nine have enrolled in the new program. A total of 44 of the 182 nursing staff members are enrolled in the program. Because only three courses are offered each year it will take approximately 6 years to complete the program for those students who do not enroll in additional course work at their own expense at the University campus.

Dr. John Gronvall, the VA's Chief Medical Director, testified on current VA efforts to improve recruitment and retention of health-care personnel. Dr. Gronvall described both the use of special pay rates, which are being authorized in those areas where the VA rates are found to be less than competitive with rates paid in the non-Federal sector, and tuition assistance programs as useful in recruitment and retention. He indicated that the VA had identified $2.5 million to be used in FY 1987 for tuition assistance purposes which is in addition to the $4.5 million planned in FY 1988 for 240 nursing scholarships.

With specific reference to the use of special rates of pay, the VA is authorized under present section 4107(g) to approve increased rates for recruitment and retention purposes for employees appointed under title 38, and for those health-care employees employed under title 5 to approve such rates subject to a veto by the Office of Personnel Management. A document entitled "Occupational Coverage of Special Rates, Report Summary", dated August 2, 1987, and submitted to the Committee in response to Chairman Cranston's request stated that in the case of registered nurses special rates have been approved in 102 facilities, 64 facilities have no special rates, 2 requests are pending in Central Office, and no requests have been refused. For physical therapists, special rates are in effect in 61 facilities, 103 facilities do not have special rates, 4 requests are pending, and no requests have been refused. Pharmacists receive special rates in 75 facilities, 68 facilities do not have special rates for them, 24 have requests pending, and one facility had its request turned down. In total, special rates in 424 instances have been approved, 79 requests are pending, and 2 requests have been turned down out of a total of 4,536 possibilities.

At the time the 1986 health occupational staff survey information was being collected, a "Staffing Shortages Task Force" was established within DM&S. This task force was charged with formulating recommendations, based upon the survey data and other information, to improve recruitment and retention in health-care occupations. Strategies being considered by this Task Force include "improved benefits packages, increased recruitment budgets, expanded use of Saturday premium pay under section 4107(e)(10) of title 38, provision of recruitment bonuses for new hires, streamlining the application process for title 5 occupations, including the increased use of direct hire authority, and increased use of para-professional personnel."

Committee bill

Saturday Premium Pay for Nurses.—Section 325 of the Committee bill would require the Administrator to provide nurses who work on Saturdays with the same premium pay—an amount equal to 25 percent of basic pay—currently applicable to Sunday work. In the 1986 VA Health Occupational Staff survey, 40 percent of VA facilities reported that weekend premium pay offered at non-VA medical facilities placed them at a competitive disadvantage. In addition, many private sector hospitals provide nurses with a minimum of every other weekend off. Registered nurses at VA medical centers generally have one weekend out of three off and, since premium pay is provided only on Sundays, this means that not only are many VA nurses working one-and-a-half times as many weekends as their non-VA counterparts, but they are receiving considerably less pay for their weekends.

Section 326 of the Committee bill would establish a Health Professionals Educational Assistance Program, one component of which would be the current Health Professionals Scholarship Program, which is set forth in subchapter IV of title 38 and which would be amended by this section of the Committee bill, and the other component of which would be a newly-established tuition reimbursement program.

Tuition Reimbursement Program: The tuition reimbursement program would provide financial assistance for full-time nursing personnel, and, when needed, for other full-time health-care personnel, for academic courses leading toward completion of any degree program in nursing or in a field related to nursing, or other appropriate degree-granting fields for other personnel. First priority in the award of scholarships would be given to those with 2 years or more of VA service whose performance is superior, and second priority, to others with 2 or more years of service.

Under the Committee bill, tuition reimbursement would be provided to nurses and other eligible employees following successful completion of the course or courses. An employee who has worked a minimum of 2 years full-time for the VA would be eligible to receive a maximum of $2,000 a year—with increases indexed to federal pay raises—and would be required to work for the VA for a period of one year following completion of the degree or the last course taken while a participant in the tuition reimbursement program. The VA could also enter into agreements to pay the teaching institution directly, as Dr. Green described at the May 21 hearing, an option the Committee encourages the VA to explore fully.

Many private sector hospitals offer tuition reimbursement programs to enable nurses and certain other health-care professionals to attend school for the purpose of obtaining a degree. Since the nursing profession is now emphasizing a baccalaureate degree as a minimum degree for staff nurses, more so-called "diploma" nurses, those who studied for 3 years in a hospital-based program, and nurses with Associate's degrees, are seeking opportunities to return to school. Also, many nurses with a baccalaureate degree are interested in pursuing graduate education and this program would assist them and, in that regard, ultimately provide more advanced and skilled practitioners for the veteran-patient. The VA could also provide tuition reimbursement for degrees to other individuals, such as pharmacists, PTs, and occupational therapists, providing direct patient-care services, if it is determined that such a program would help alleviate recruitment and retention programs in the occupation concerned.

Seventy-seven percent of VA facilities, as reported in the VA's survey, believe that the lack of availability of tuition assistance as a fringe benefit is a major disadvantage in recruitment and retention. Over 80 percent of hospitals surveyed by the American Organization of Nurse Executives in 1985 offered tuition assistance as a benefit for full-time employees.

As a final point regarding tuition reimbursement, the Committee notes that Dr. Gronvall testified at the Committee's May 21 hearing that the VA was offering a tuition assistance program under the Government Employee Training Act (codified in chapter 41 of title 5, United States Code). Although the VA's General Counsel has interpreted this Act as allowing the VA to provide tuition assistance for the pursuit of a degree, there is the possibility that this opinion could be challenged and the training act could be limited only to those seeking to improve or upgrade their skills and not to those obtaining a degree. Section 326 of the Committee bill would explicitly authorize the VA to provide assistance to those taking courses leading to a college degree under the terms and conditions set forth in the new subchapter governing tuition reimbursement programs. It is the Committee's intention that any tuition reimbursement program carried out by the VA be implemented under this new authority which is intended by the Committee to supercede any authority the agency may have under the Government Employees Training Act.

Health Scholarship Program Modifications.—With reference to the Health Professional Scholarship Program, section 326 would expand the categories of those eligible to participate in this program—students of medicine, osteopathy, dentistry, podiatry, optometry, or nursing, or who are enrolled in a course of training to become a physician assistant or expanded-function dental auxiliary are eligible under current law—to include physical therapists and other individuals who provide direct patient-care services or who provide services incident to direct patient-care service. This program was created in 1980 to assist in providing an adequate supply of trained physicians and nurses for the VA and for the Nation. Those who receive a scholarship are obligated thereafter to work in DM&S for certain minimum periods.

Before awarding scholarships in any course of training other than in medicine or nursing, the Administrator must notify the Senate and House Committees on Veterans' Affairs of the awards not less than 60 days prior to making them. Since the education and training needs have been the greatest for nurses, thus far the scholarships have been used exclusively to help train nurses—and with substantial success in attracting and retaining them. Of the 434 nurses who have completed their service obligation under the scholarship program, 329—73 percent—remain employed at the VA.

PTs have manifested interest in the scholarship program, and the Committee believes there may also be interest among other professionals whose skills are in great demand in the VA. The scholarship program offers an opportunity for the VA to attract younger professionals in scarce-skill categories into the system.

The VA indicated in connection with its FY 1988 budget request that the agency would like to provide scholarship support to PT students as well as to nurses, and the FY 1988 budget request included $1 million to support 41 one-year awards and 12 2-year awards to full-time PT students. Under this section of the Committee bill, the VA would be able to make these awards.

Section 326 would also lengthen the period of obligated service under the Scholarship Program from one year for every year of support to 2 years for every year of support and provide priority for nurses seeking a fourth year of baccalaureate training. Under the current scholarship program, recipients are required to serve for a period of one year for every year of scholarship support they receive, with a minimum of 2 years. Other scholarship programs, such as the newly established Congressional Teachers Scholarship program require a service obligation of 2 years of service for every year of scholarship. Lengthening the pay-back period under the VA program to two years for every year of support is designed to encourage greater retention of nurses and other professionals who receive educational assistance under the Scholarship program.

Because there is a demonstrated need for qualified nurses within the VA and the demand for nursing services is intense, the Committee believes it is wise to identify, in advance, those students who can offer support in the near future and, while assisting these students to complete their education, receive a commitment from them to work in the VA for a special minimum period of time. Thus, section 326 of the Committee bill would provide priority in awarding scholarships for nurses in their fourth year of baccalaureate education.

Recruitment and Retention Bonus Pay.—As introduced, S. 713 would have required the VA to pay a bonus of up to $20,000 to registered nurses who agreed to work on a full-time basis in a geographic location or professional specialty for a minimum of three years as determined annually by the Administrator. In addition, the bill precluded the bonus from being paid to registered nurses who had received a training scholarship which obligated them to serve in the VA. Finally, S. 713 would have provided for a mechanism for paying the bonus and for the collection of money if the bonus was paid and the recipient failed to meet the obligation.

Under the Committee bill, these provisions were modified to take into account additional information which was received during the Committee's May 21 hearing. The Committee bill would authorize the VA to provide a bonus of up to $20,000 to individuals—registered nurses or other health-care personnel but not including dentists and physicians—who enter into a written agreement with the VA to serve full-time for a period of at least four years. Individuals who are presently working in the VA or who agree to work for the VA in a geographic area or in a professional speciality in which the VA is experiencing recruitment and retention difficulties would be eligible for the bonus under the Committee bill.

The Administrator would be required, at least once annually, to determine geographic locations and professional specialties where recruitment and retention problems exist for the personnel categories authorized to receive the bonus under the Committee bill. The

Administrator would further be required to notify the Committees promptly of this determination and the justification for it.

Under the Committee bill, employees would not be eligible for the bonus if they are fulfilling an obligation of service as a result of the receipt of a training scholarship or tuition reimbursement. However, once the obligation is complete, the employee would be eligible for the bonus authorized by this section.

In order to avoid staffing fluctuations which may result if the bonus is not offered in a consistent manner, the Committee bill would require that all personnel serving in the same profesional capacity in the same geographic area be offered the opportunity to receive the bonus under the same conditions.

There are a number of provisions relating to the payment of the bonus in the Committee bill. First, money paid as a bonus would be in addition to any pay to which the employee is already entitled and would not be considered basic pay for other purposes, such as determining retirement benefits. Second, the bonus would be required to be paid in equal installments after each year of service is completed throughout the period of obligated service; however, the Administrator would be authorized to make the payment of an amount not in excess of 25 percent of the total bonus in a lump sum at the time the agreement between the employee and the VA is executed. In this case, the balance of the bonus would be paid in equal installments after each year of service. Additionally, if an employee fails to perform the services agreed to—either voluntarily or because of misconduct—the employee would be required to refund the bonus payment, and, unless the failure is beyond the control of the individual, the amount to be repaid would be considerd a debt owed to the United States. Finally, the Administrator would be required to prescribe regulations to carry out the bonus program as provided for under the Committee bill.

Representation of Nurses on Medical Center Policy Committees.— One factor that was noted during the Committee's May 21 hearing, and since that time, that contributes to job dissatisfaction among nurses generally, is the lack of representation of nurses in the decision-making process regarding policies that affect them and the overall management of their facilities. Issues regarding workload, shift assignment, budget, and support staff all contribute to the "quality of life" for nurses, and nurses should have input into decisions that relate to those issues.

In 1980, Chairman Cranston proposed legislation (in S. 2534 as reported) to elevate the Director of Nursing Service in the VA Central Office to an Assistant Chief Medical Director or a Deputy Assistant Chief Medical Director in order to give the Nursing Department head a greater role in policy matters within DM&S. Although that provision was not enacted, the VA proceeded administratively to elevate the position of Director of Nursing Service to the Deputy CMD level. At that time, in the explanatory statement which the Chairmen of the House and Senate Committees on Veterans' Affairs inserted in the *Congressional Record* (H. 6852, July 31, 1980, and S. 10547, August 1, 1980) during final consideration of the legislation that was enacted as Public Law 96-330, the Committees stressed that it was vital to have extensive Nursing Service participation in planning, policy development, and decision-making activities throughout the VA health-care system, not only at Central office but in individual VA health-care facilities as well.

However, it is the Committee's understanding that many VAMC's committees do not include nursing representatives. For example, out of 172 VA medical centers, 146 include the Chief of Nursing Service or designee on their hospital education committees, and 135 include such representation on the position management committees, while only 109 VAMC's hospital budget committees do the same. There is no data available as to how many VAMCs, if any, have nursing representatives on all pertinent committees. Because of the importance given to the need for nursing representation, this Committee believes that there must be a uniform policy of including nurses on all key hospital committees at all VA facilities.

Thus, section 329 of the Committee bill would require that Chiefs of Nursing Services or their designees be members of all VA health-care facilities policy-making and fiscal committees, including those relating to budget, education, position management, Dean's committee, clinical executive issues, planning, and resource allocation.

Study of Recruitment and Retention Issues.—Section 332 of the Committee bill would require VA to carry out, and submit a report on, a study, of various issues related to enhancing recruitment and retention of health-care personnel within the VA. The issues to be studied include (1) whether pay compression—that is, restricted potential salary ranges for employees—occurs within VA salary structures and, if it does, the feasibility of revision to correct for this problem; (2) whether the payment of pay differentials for evening and night tours of duty needs to be increased in order to improve the ability of the VA to recruit for these shifts; (3) whether the VA should furnish diagnostic testing and prescription-filling services to employees for a fee not to exceed the amount of the cost incurred by the VA, if that could be done without diminishing the services to veterans; (4) whether opportunities for research can be given to nurses with advanced degrees; (5) whether it is feasible and desirable to establish collaborative-practice committees including physicians, nurses, and other health-care providers as appropriate; and (6) whether it is practical to offer a program of flexible benefits to VA health-care employees.

Although issues involving pay practices, scheduling, and recognition of worth as an employee have been addressed to some extent by the VA, the Committee believes that more needs to be done in these areas and, for this reason, would require this in-house study and report.

With regard to pay compression, particularly when special rates are in place or when a system is partially adjusted rather than reviewed in total, it frequently happens that the ranges between new and more senior employees or between staff and supervisors no longer bear a logical relationship between one another. This phenomenon has the potential to create dissatisfaction among the more highly paid workers, eventually causing them to leave the organization.

Furnishing care in medical facilities is a 24-hours-a-day, 7-days-a-week requirement and requires scheduling employees to work at times that are viewed generally as undesirable. Because the majority of workers choose to work Monday through Friday during regular daylight hours, in order to attract workers to other shifts or to work at less desirable times employers frequently pay premium wages. Currently, in DM&S, the Administrator is required, under section 4107 of title 38, to pay premium wages to nurses and other designated health-care employees at a rate equal to 10 percent of the employee's hourly rate of basic pay if at least 4 hours of the tour of duty fall between 6 P.M. and 6 A.M. The study should analyze whether the 10-percent differential is sufficient and, if not, whether an increase would attract personnel to the less desirable shifts on a permanent basis.

The expense associated with health care is escalating, not only for the individual consumer but for those employers paying the insurance premiums. One method used by private sector hospitals to decrease both their own costs—of premiums for employees health insurance—and those of their employees is to offer, for a fee not to exceed the cost, diagnostic testing, i.e. laboratory and radiology services, and prescription-filling services to personnel. This is viewed generally by employees who have not had that option available as a benefit. The study should examine this option; the Committee stresses however. that it is not its intent to detract from services offered veteran patients and any services offered to employees would have to be on a not-to-interfere basis with the cost or provision of services to those veterans.

Another recruitment tool the VA would be required to study under this provision of the Committee bill is the practice of establishing clinical, administrative, and educational research opportunities in nursing. This has been successful in attracting highly qualified physicians to the VA in the field of medicine.

As previously mentioned, at both the 1982 and 1987 Committee hearings, the NOVA representatives testified to the need for closer working relationships between physicians and nurses. That this has been brought to the Committee's attention in separate hearings five years apart suggests that this issue has not been resolved within the VA. Collaborative practice programs which foster interdisciplinary professional collaboration and colleagial relationships between physicians, nurses, and other direct health-care providers have been shown as enhancing personnel job satisfication. In this regard, the Committee intends that the VA study these programs and determine their feasibility in the VA setting as one means of providing recognition of the nursing staff and showing that their ideas are valued.

The final area that the Committee bill would require to be studied is flexible benefits programs. Frequently referred to as "cafeteria style" benefits, such programs offer employees a choice among types of health insurance, disability insurance, child care, annual leave, sick leave, and other benefits which are paid for in whole or in part by the employer. The employee may or may not be expected to contribute to the cost, depending upon the specific plan. The Committee believes that employers who take the individual needs of their personnel into consideration will be more successful in both recruitment and retention. Therefore, if the VA study of flexible benefits finds them to be feasible to implement, the Committee would encourage the agency to take such action. In this regard, the Committee expects the VA to consult with labor representatives when a negotiated contract is involved.

The Committee notes that several provisions contained in the Committee bill are a result of a prevailing preception among nurses, and others considering nursing as a possible career, that their suggestions go unheeded, their input is not valuable, their contributions are insignificant, and their efforts go unrecognized. The period of time over which these allegations have been made, the frequency with which shortages are occuring, and the severity of the present shortage lends credibility to these statements. Because the VA is the largest health-care system in the Nation, the Committee believes the VA should become a leader by providing enhanced opportunities for nurses in the decison-making process—administratively, clinically, and educationally— and implementing innovative approaches to changing both the image and responsibilities of nursing.

On-Call Pay

Section 328, which was derived from S. 1065, an Administration proposal, would amend section 4107 of title 38 to authorize the VA to utilize the title 38 "on-call" pay provisions for newly-hired or newly-assigned title 5 health-care personnel.

Background

Currently, in order to ensure that adequate numbers and types of health-care personnel who are appointed pursuant to regular Civil Service authorities in title 5, United States Code—such as radiology and laboratory technicians—are available in medical emergencies or for unforeseen medical needs which occur outside of regular duty hours, the VA places such employees on standby duty and pays them premium pay pursuant to section 5545 of title 5. While on standby status, these employees are expected to remain at their duty stations—or at home if that location has been designated as a duty station by the VA for such purposes—until called to return to work. The amount of premium payment received by personnel on standby duty is based upon predetermined criteria which take into account the average number of hours per week the employee is expected to remain on standby duty, whether the standby duty occurs on a regular workday or non-workday, and whether the duty occurs Monday through Saturday or on Sunday. Employees receiving premium pay as a result of standby duty receive this payment, which cannot be less than 5 percent nor more than 25 percent of their annual salary, each pay period regardless of whether, or how often, they are called to return to work. In instances when an employee is called to return to work, he or she receives no additional pay beyond this premium.

In contrast, VA health-care personnel employed pursuant to the VA's special personnel authority in title 38 who may be needed for a medical emergency during their off-duty hours, are placed in an on-call status pursuant to section 4107 of title 38. Although employees in this on-call status are subject to being called back to work outside regular tours of duty, their physical movements are not confined to a designated duty station. They may arrange for a coworker to respond to a call, leave a telephone number by which they can be reached should their services be required, or carry an electronic pager by which they can be reached within a designated radius of the medical center. For each hour they are on-call, employees receive premium pay equal to 10 percent of their hourly overtime rate. If required to return to work, an employee receives, in lieu of on-call premium pay, overtime pay for the time actually worked, although a minimum of 2 hours overtime pay must be paid each time the employee is called back regardless of the actual time worked.

In the March 31, 1987, letter transmitting legislation (introduced as S. 1065) to require the VA to provide on-call pay to certain title 5 health-care personnel, the Administrator stated that the current method for providing standby-duty premium pay for title 5 VA employees was very expensive for the agency and could add as much as $6,000 in annual pay for each of the VA employees involved. In a written response to an inquiry relating to the relationship between on-call and standby pay from Chairman Cranston following the Committee's May 21, 1987, hearing, Dr. John Gronvall, the VA's Chief Medical Director, stated, "An employee who is regularly called back to work will generally receive about the same or more compensation under the on-call system as under the standby." He also stated, "On-call systems are commonplace among health care workers in the competitive marketplace; lack of familiarity with an unknown standby system may be a recruitment deterrent. In this respect an on-call system could improve the competitive position of a VAMC".

The Committee recognizes the current competitive environment for qualified health-care personnel and supports efforts being taken by the VA to recruit and retain capable employees.

Committee bill

In response to the VA's legislative proposal, section 328 of the Committee bill would authorize the VA to utilize the title 38 on-call pay provisions for newly-hired or newly assigned title 5 health-care personnel. The Committee bill would also provide that employees working pursuant to title 5 earning standby pay on the date of the enactment of the Committee bill could similarly be assigned to on-call status but the pay of such employees would be computed using both standby and on-call methods and they would be paid at the greater rate for as long as they remained in their "grandfathered" position and work unit.

In proposing to protect current title 5 employees serving on standby, the Committee intends to protect their economic interests in their present employment status. The Committee expects the VA to ensure that grandfather status or the absence of that status will not be a consideration in scheduling and awarding on-call assignments. It is also the Committee's intent—and the VA has agreed—that "grandfathered" employees who are considering changing their employment status will be advised regarding the effect that that change would have upon their rights to standby pay. If this provision is enacted, the Committee plans to monitor these aspects of its implementation closely.

It is not clear to the Committee after reviewing the letter from the Administrator accompanying the proposed legislation, the response of Dr. Gronvall to Senator Cranston's questions, and the result of follow-up discussions with VA officials, whether this change in how the VA pays employees for being available for after-hours work will result in savings or additional costs. The Committee is providing the VA with this new authority in order to assist in its recruitment and retention of health-care employees.

Authority to Waive Certain Requirements for VA Personnel

Section 330 of the Committee bill, which is derived from S. 915, an Administration proposal, would amend section 4114(d) of title 38 to provide the VA with the authority to waive the licensure or registration requirements, or both, for certain registered, practical or vocational nurses, and physical therapists and to waive the internship requirement for certain research psychologists.

Background

Under current law, registered, practical or vocational nurses, and physical therapists—as with other health-care professionals including physicians and dentists—must be licensed or registered in a State to be eligible for appointment in the VA's Department of Medicine and Surgery. Currently, the CMD has the authority to waive the State licensure requirement for physicians, dentists, podiatrists, psychologists, or optometrists, who are appointed on a temporary full- or part-time basis to research or academic posts or where there is no direct patient-care responsibility. In addition, the CMD may waive the requirement for State licensure or registration for the above mentioned professionals as well as for nurses when the person is to serve the VA on a temporary full- or part-time basis in a foreign country in which the person has licensure or registration.

Under current section 4105(a)(8), VA psychologists are required to have a doctoral degree and during the course of preparing for the degree must have completed a course of academic study in psychology and an internship. In addition, the same provision of law requires that a VA psychologist must be licensed or certified as a psychologist in a State. Section 214(b) of Public Law 99-576, as enacted on October 28, 1986, provided the VA with the authority to waive the licensure requirement for certain research psychologists who do not provide any direct patient care within the VA.

Committee bill

Under the Committee bill, the CMD would be authorized to waive state licensure requirements or registration, as appropriate, for registered, practical or vocational nurses, or physical therapists if they are to be appointed to a research or an academic position with no direct patient-care responsibilities or in a country other than the United States where the practitioner is licensed and will be working. Additionally, the Committee bill would exempt certain psychologists from the one-year internship requirement if they are involved in research or academic work exclusively and have no patient-care responsibilities. The enactment of these provision would enable the VA to promote its medical research and education programs by providing the CMD with additional flexibility to appoint nonlicensed registered, practical or vocational nurses, physical therapists, and psychologists to research or academic assignments.

Rates of Pay for Certain Psychologists

Section 331 of the Committee bill, which is derived from S. 105, would require the Administrator to increase the rates of pay for VA psychologists with board certification by using the appointment authority provided in section 4107(g) of title 38 unless the CMD determines within 90 days of the date of enactment, that an increase of board-certified psychologists is not necessary for the VA to furnish the appropriate quality of psychological services to veterans.

Background

Pursuant to present section 4107(g), which was provided by section 108 of Public Law 95-528, as created in 1984, the Administrator has the authority to increase pay rates for, among others, clinical or counseling psychologists who hold diplomas as diplomats in psychology from an accrediting authority approved by the Administrator if there is difficulty recruiting these professionals.

Both Senator Daniel K. Inouye, the author of S. 105, and Leonard Goodstein, Ph.D., Executive Director, American Psychological Association, in testimony submitted for the Committee's May 21, 1987, hearing stated that this measure would help the VA to recruit and retain qualified psychologists as well as promote the provision of a higher quality of health care to veterans. Dr. John Gronvall, the VA's CMD, testified at that same hearing that the VA was not experiencing difficulty in recruiting and retaining psychologists and that a bonus as provided for in this legislation was not necessary "to attract and maintain the number of highly qualified psychologists needed for the VA health-care mission".

Committee bill

Section 331 of the Committee bill would require the Administrator to authorize, within 90 days after the enactment of this legislation, special pay rates for clinical or counseling psychologists who hold diplomas as diplomats in psychology from an accrediting authority approved by the Administrator, unless the CMD determines that such psychologists are not needed to furnish the quality of care determined by the CMD to be appropriate. Should additional pay be authorized pursuant to this provision, the rate would be set at an amount determined by the Administrator, upon the recommendation of the CMD, to be necessary to make VA pay competitive with the pay of psychologists having the same qualifications and credentials serving in non-VA capacities.

It is the Committee's view that the care provided to veterans should be of the highest caliber and that if board-certified psychologists are necessary to provide such a level of care the Administrator and CMD should utilize the authority they possess under section 4107(g) to recruit such employees.

Drug Testing

Section 333 of the Committee bill would prohibit the VA from conducting any program of testing VA employees for the use of illegal drugs, as defined under Executive Order 12564 (September 17, 1986), except for the conduct of tests in three specified circumstances applicable to individual employees, namely (1) when there is a reasonable suspicion that an employee uses illegal drugs, (2) in an examination authorized by the VA regarding an accident or unsafe practice (which in the provision of health care would be defined to be an unsafe practice that has resulted or could reasonably be expected to result in an adverse patient outcome), or (3) as part of or in follow-up to counseling or rehabilitation for illegal drug use through an employee assistance program (EAP).

Background

On September 15, 1986, President Reagan issued Executive Order 12564, which directs all federal agencies to develop plans for achieving a "drug-free workplace". Under section 3(a) and (b) of the Order, these plans must include programs (1) to test for illegal drug use those employees in "sensitive positions", a term defined in section 7(d) of the Order to include positions that "involve public health or safety", and (2) for voluntary employee drug testing.

In addition to being required to conduct mandatory and voluntary drug-testing programs, the head of each agency is authorized, under section 3(c) of the Order, to test an employee for illegal drugs under three circumstances: (1) When there is a reasonable suspicion that any employee use illegal drugs; (2) in an examination authorized by the agency regarding an accident or unsafe practice; or (3) as part of or as a follow-up to counseling or rehabilitation for illegal drug use through an EAP. An illegal drug is defined in section 7(c) of the Order as a Schedule I or II controlled substance (as defined in 21 U.S.C. § 802(6)) the possession of which is unlawful under chapter 13 of title 21, except for substances being used pursuant to a valid prescription or other lawful authorization.

Accuracy and Reliability of Drug Testing.—The accuracy and reliability of drug testing methods vary widely depending on the quality of test kit or method, the skill and care of the technician and laboratory, and the attention paid to maintaining a clear, documented chain of custody.

The potential for both false positives and false negatives are of serious concern. False-positive mistakes that identify a "clean" sample as containing an illegal drug can result in innocent people losing their jobs. A significant rate of false-negatives calls into serious question the cost-effectiveness of widespread mass screening.

According to the Office of Technology Assessment, the predictive value of the test—the likelihood that a positive test actually reflects the presence of drugs in urine—is only high when there is a high prevalence of drug use in the test population. In fact, the OTA estimates that when the prevalence of drug use is less than 10 percent, less than half of the positive tests on the initial screening will be truly positive. Moreover, as the prevalence decreases, the cost of identifying each truly positive individual increases dramatically. When the OTA assumed the cost of the initial screening to be

$15.00 and the confirmatory testing to be $40, the cost to identify each positive urine specimen in a population in which 10 percent use drugs was determined to be $236, while the cost in a population in which only 2 percent use drugs was $1,036.

The FY 1987 Supplemental Appropriations Act.—The Congress included provisions in section 503 of the FY 1987 Supplemental Appropriations Act (Public Law 100-71), enacted on July 11, 1987, to establish certain requirements for carrying out any drug testing programs under the Executive Order. These provisions require, among other things, that prior to any agency implementing a drug testing program (1) the Secretary of Health and Human Services (HHS) must (a) certify that each agency has developed a plan in accordance with the Executive Order and the law, (b) certify that guidelines establishing standards for laboratory procedures and for laboratory certification and review and specifying which drugs may be tested for have been published with a public comment period, and (c) submit to Congress an agency-by-agency analysis relating to the criteria and procedures to designate employees or positions for drug testing, and (2) the Director of the Office of Management and Budget must submit to the Appropriations Committees of the Congress a cost estimate for each agency's drug-testing plan.

HHS issued the proposed guidelines, Scientific and Technical Guidelines for Federal Drug Testing Programs; Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies on August 14, 1987.

It is important to note that Section 503 did not require any drug testing of Federal employees. It limited the circumstances and conditions under which the Executive Branch could undertake such testing in its discretion.

Prevalence of Drug Abuse Among Physicians: The Committee has found little supporting data that drug abuse is higher in physicians and nurses, either inside or outside the VA, than in the general population. Very little solid epidemiological evidence exists and most reports citing physician impairment due to drugs is anecdotal.

In an article by Dr. William McAuliffe, entitled "Psychoactive Drug Use Among Practicing Physicians and Medical Students", in the September 25, 1986, issue of *The New England Journal of Medicine,* it was reported that in a random sample survey of 500 practicing physicians, 70 percent of whom responded, one-third said they used psychoactive drugs sometime in the previous year. One in four had treated themselves with a psychoactive drug—for example, marijuana, amphetamines, cocaine, barbiturates, tranquilizers, codeine, or morphine—and 1 in 10 used a drug recreationally. Less than 10 percent used drugs on a regular basis (once per month or more). Three percent of physicians reported drug dependency.

The article concluded, "Recreational use among physicians and medical students is similar to or lower than that among other professionals and occupational groups." Moreover, the problem of "self-medication" with prescription drugs, which has been considered an occupational hazard in medicine, was not found to be highly correlated with either dependence or impairment. Although the study did not include alcohol abuse among physicians, other studies have found that among physicians seeking treatment for dependencies, alcohol accounted for at least half of those dependencies.

In a literature review of alcohol and drug use among physicians, which appeared in the April 11, 1986, issue of the *Journal of the American Medical Association,* the prevalence of drug problems among physicians was reported to be unknown but it was concluded that physicians are not usually likely to have such problems. For instance, one study reviewed found that among 100 physicians questioned in New York about stress, 8 respondents drank heavily or abused alcohol and two reported having abused drugs, only one of whom was currently dependent.

VA Drug Testing Plan.—On October 19, the VA briefed the staffs of the Senate and House Veterans' Affairs Committees on a plan it was developing for drug testing in the VA. Under that plan, which is undergoing Executive Branch review, beginning in the spring of 1988, employees would be tested in one of four circumstances: (1) reasonable suspicion, (2) accident or incident investigations, (3) follow-up for rehabilitation, or (4) random selection in sensitive positions. Approximately 135,000 employees would be subject to random testing. These employees include all health-care professionals, safety and law enforcement personnel, key management officials, computer specialists with access to sensitive data, and technical employees who operate major systems. Of the 135,000 employees, approximately 90 percent would be direct providers of health care. In addition, applicants tentatively selected for employment—there are approximately 65,000 annually—would be randomly selected for drug testing.

Although 135,000 employees may be subjected to testing, the VA estimates that only 10,000 employees would actually be tested in the first year. The number would increase to 40,000 per year in 1992, with a total of 100,000 employees tested in the first four years. Individuals would be randomly selected by computer, and urine specimens would be collected within 2 hours of notification. No direct observation of specimen collection would generally be required. Results of the test would be reviewed by a Medical Review Officer (MRO) at each Medical Center. Individuals with positive results would be required to provide their medical records to the MRO to determine other potential sources of the positive test result.

The Navy has agreed to conduct the urinalysis of the 10,000 specimens at a cost of $15 per sample (to include initial and confirmatory test, if positive). However, the VA tentatively estimates that the total cost for drug testing would be $36 per sample when the cost of the technicians' time, collection bottles, chain of custody, mailings, and medical review are accounted for. The VA tentatively estimates that first-year costs would likely be proportionately much higher—$2 million—than annual costs thereafter because of the additional expenses asociated with supervisory training, employee education, and other administrative and start-up costs. The VA further tenatively estimates that in the fourth year of the program—when 40,000 tests would be conducted—the total costs would only rise by $500,000 to $2.5 million. These costs do not inlcude any rehabilitation costs in VA EAPs, discussed below.

The Committee questions this estimate on a number of grounds, including whether the Navy Department or any other laboratory will be providing 40,000 test results at $15 per employee at that point. For example, a recent article, "Drug Testing in the Workplace—Are Methods Legally Defensible?" in the July 24, 1987, issue of the *Journal of the American Medical Association,* reported that, although the military estimates that the cost per sample for the same two-procedure method is about $20, the total cost for the military's drug testing program including sample collection, legal procedures, and administrative costs, comes to almost $100 per sample.

The VA reports that the total number of drug abuse cases that were treated in its EAPS nationwide in FY 1986 was only 654—two-thirds of whom self-referred. The VA further estimates that the number of alcohol, abuse cases treated in EAPs is more than double that—approximately 1,500.

Committee bill

Section 333 of the Committee bill would generally prohibit the VA from implementing a widespread drug testing program of VA employees, except under three circumstances—derived from the provisions in section 3(c) of Executive Order 12564—as follows: (1) when there is a reasonable suspicion that an employee uses illegal drugs; (2) in an examination authorized by the VA regarding an accident or unsafe practice (which in the provision of health care would be defined in the Committee bill to be an unsafe practice that has resulted or could reasonably be expected to result in an adverse patient outcome); or (3) as part of or as a follow-up to counseling or rehabilitation for illegal drug use through an EAP.

The first and third circumstances are identical to two of the circumstances specified in section 3(c) of the Executive Order and the VA's plan; the second is derived from section 3(c) but is clarified to be more appropriate to the VA health-care system and thus less susceptible to unreasonably broad interpretation. The Committee does not understand there to be any VA disagreement with the refinement of this criterion in the Committee bill.

Although the Committee recognizes the value and importance of the provisions of section 503 of the FY 1988 Supplemental Appropriations Act in helping to ensure the fairness, accuracy, and reliability of any drug testing that is conducted of Federal employees, the Committee does, not believe that there has been a sufficient demonstration that a mandatory drug testing program is necessary or warranted in the case of VA healthcare employees and that testing procedures allowed under the other three circumstances set forth by the Executive Order are not adequate to identify drug users or to deter drug use.

No available data indicate that VA health-care personnel in general have particular drug abuse problems. VA employees do not fit the general profile of drug abusers, who tend to be young, single, and hold temporary jobs. On the contrary, according to the VA, alcohol abuse appears to be a much greater problem for health-care personnel than does illegal drug use, and the Committee encourages the VA to direct its energies and resources to establishing effective employee education and rehabilitation programs regarding alcohol abuse.

The Committee is deeply concerned about the effects of random testing on the VA's ability to recruit and retain high-quality health-care professionals. Randomly subjecting VA employees—many of whom are professionals who have chosen a career with the VA over higher paying jobs in the private sector—to such intrusions could create substantial morale problems and thus seriously impede the VA's efforts to be competitive with universities and community hospitals at a time when the VA is already experiencing serious recruitment and retention difficulties—especially with respect to nurses, pharmacists, and certain other health specialties.

Thus, on balance, because of the high cost of identifying each drug-using individual, the Committee does not believe that it would be cost-effective as a means to reduce drug use among VA employees or otherwise in the best interests of the furnishing of quality care to the Nation's veterans for the VA, the largest employer of Federal health-care workers, to conduct a mass drug testing program. The funds required could more effectively be spent on education and other prevention efforts including efforts to combat alcohol abuse. Even under the VA's tentative estimates, which the Committee believes are dramatically understated, the cost of drug testing would be at least $10 million for the first 4 years. The Committee feels strongly that these resources would be far better directed toward providing direct patient care to veterans.

Subpart 2—Other Medical Administration Matters

Repeal of Authority to Furnish Tobacco

Section 341 of the Committee bill would repeal section 615 of title 38, which authorizes the Administrator to furnish tobacco to hospitalized veterans.

Background

Under current law, the Administrator is authorized to furnish cigarettes and other tobacco products to veterans receiving hospital or domiciliary care. The Administrator has not used this authority for over 20 years.

Committee bill

The Committee bill would eliminate this authority which is clearly inconsistent with current VA practice. The Committee believes that, in light of the information regarding the health hazards associated with smoking and the potential harm to those in the vicinity of smoke, tobacco products should not be given to hospitalized veterans. The distribution of tobacco products—at no cost to the veteran—may encourage some to utilize such products. The Committee notes that the repeal of this authority would not prohibit the canteen service from selling tobacco products and applauds the VA's efforts to encourage a "smoke free" environment in VA facilities.

Hospital Cost Collections

Section 342 of the Committee bill, which is derived from section 101 of S. 1063, would amend section 629(b) of title 38 to clarify the period of time during which the VA may institute legal action to recover the cost of VA health care in certain circumstances.

Background

Under current law, the United States, in some circumstances, has a right to recover from third parties the cost of health care furnished by the Veterans' Administration for the treatment of non-service-connected disabilities. In order to enforce its right to recover, section 629(b)(2)(B) authorizes the United States to file suit against a third party. However, the law contains no specific time limitation in which a suit must be brought.

Committee bill

In order to clarify this situation, the Committee bill would require that any legal action to recover the cost of VA care and services be brought not more than 6 years from the last day on which the care or services for which recovery is sought were furnished.

Tort Claims Settlement

Section 343 of the Committee bill, which is derived from section 201 and 202 of S. 1063, would amend section 4116 of title 38 to expand the immunity from personal liability for VA health-care personnel and would add a new section 223 to title 38 to authorize the Attorney General to delegate to the Administrator the authority to settle certain claims for money damages against the United States.

Background

Under current law, VA health-care personnel are protected from personal liability in medical malpractice actions arising out of negligent conduct in the delivery of health-care services to veterans. In such instances, the United States is the sole defendant under the Federal Tort Claims Act (FTCA), sections 1346(b) and 2671-2680 of title 28, United States Code, for suits against VA medical personnel arising from medical malpractice. This immunity does not extend, however, to actions arising out of intentional conduct or so-called "intentional torts", which, according to the VA, is how some State laws characterize alleged torts in medical malpractice actions. Thus, VA physicians may not be protected in such States; this is not the case with regard to similar personnel in other Federal agencies and departments, such as the Department of Defense, where medical personnel are afforded this degree of protection (see 10 U.S.C. 1089(e)).

Also under current law, the authority of all Federal agencies to settle administrative tort claims under FTCA section 2672 of title 28, United States Code, is currently limited to $25,000. This monetary limit, which can be changed only by legislation, has been in effect for over 20 years. Since the establishment of this limit, the average dollar amount of tort claims has risen significantly above the $25,000 cap, thereby precluding administrative settlements by the VA in many cases. The result has been delay in reaching settlements, increased administrative costs, and the possibility of costly litigation.

Committee bill

The Committee bill would expand the circumstances under which the Federal Government accepts liability for the negligent acts of VA employees acting within the scope of their employment so as to cover so-called intentional torts. This provision is patterned after the current law provision, noted above, which protects Department of Defense health-care personnel.

In addition, the Committee bill would permit the Administrator to settle administrative tort claims to the extent delegated by the Attorney General. The maximum amount of such settlement authority would be equal to the maximum settlement authority which the Attorney General provides to a United States Attorney. The Associate Attorney General of the Civil Division has advised the VA General Counsel that there is no objection to this proposal.

Annual VA Medical Facility Construction Authorization

Section 344 of the Committee bill would amend section 5004 of title 38 to replace the existing Veterans' Affairs Committees approval-resolutions process for VA major medical construction or acquisition projects with a legislative authorization process under which it would not be in order in either House to consider a bill, resolution, or amendment appropriating funds for (1) a major VA medical construction project (one costing over $2 million) unless the amount for the project is specified in the appropriations measure and does not exceed the amount authorized for the project by a provision of law enacted in legislation reported by the two Committees, or (2) a medical facility lease with an estimated annual rental exceeding $500,000 unless the lease has been authorized in such a law. Section 5004 would also be amended to replace the existing prohibition against increasing the contract amount by more than 10 percent of the amount specified by the Committees' resolutions with a requirement that the Administrator give the Committees 30 days' advance notice whenever the cost of a project would exceed by more than 10 percent the amount specified in the authorizing legislation.

Background

In 1979, the Public Law 96-22 Congress enacted a procedure for formally involving the Senate and House Committees on Veterans' Affairs in the process for funding major VA medical facility construction projects. Under that procedure no appropriations for major VA medical facility construction were permissible unless both Committees had first adopted a resolution approving the project and setting forth the estimated cost thereof.

However, the prohibition against the making of appropriations for that projects that either were not approved by the Committee or were in excess of the amount specified in the resolutions was never enforced. As a result, in 1985 in S. 876, the Senate passed legislation—similar to that being proposed in the Committee bill—

to provide the Committees with greater input into the VA construction program. In lieu of the Senate-passed provision, section 301 of Public Law 99-166, enacted on December 3, 1985, modified the Committees-resolution process to provide that, after the two Committees have adopted construction resolutions with idential texts during a fiscal year, it is not in order in either House to consider legislation making appropriations for that or the succeeding fiscal year for a major VA medical construction project that is not in strict compliance with the resolution. Since the enactment of Public Law 99-166, however, the Committees have failed to reach agreement on such identical resolutions and this process has likewise not been a factor in the construction process.

Committee bill

In order to provide the Veterans' Affairs Committees with appropriate roles in the authorization process for major VA medical construction projects, section 344 of the Committee bill would institute an annual-authorization-of-appropriations legislation approach in lieu of the resolution approach. Under this new approach, it would not be in order in either House of Congress for an appropriation to be made for the construction, alteration, or acquisition of a major VA medical facility project or a major medical facility lease except in accordance with a law based on legislation reported from the Committees on Veterans' Affairs setting forth the amount that may be appropriated and expended for the project.

In addition, the Committee bill would provide that the amount obligated for any construction projects authorized by law—as provided for under the Committee bill—could not exceed by more than 10 percent the amount authorized by law, unless the Committees are notified and provided justification by the Administrator at least 30 days prior to obligating the additional funds.

The Committee believes that the provisions in this bill would ensure that the authorizing Committees' positions regarding VA major medical construction projects and leases are given consideration commensurate with the Committees' responsibilities, knowledge, and insights regarding the VA health-care system.

Procurement of Medical and Pharmaceutical Items

Sections 345, 346, and 347 of the Committee bill, which are derived from S. 631, would amend subchapter II of chapter 81 and section 213 of title 38, to improve the VA's medical procurement and supply program. Specifically, these provisions would (1) require the Administrator to develop and fully implement an agency-wide plan for the cost-effective standardization of medical and pharmaceutical supplies procured by the VA; (2) require the VA to procure items only through national contracts to be awarded by the VA, except under certain limited conditions; (3) require that local purchases of medical and pharmaceutical items be made through wholesalers; (4) require VA medical centers to report annually to the Administrator on the quantity and cost of items procured under local contracts and the Administrator to report annually to the Committee on Veterans' Affairs on its experiences in procurement, including a summary list of items purchased under local contract; and (5) authorize the VA to use multiyear procurement contracts, except when such contracts would interfere with the maximum procurement of generic drugs.

Background

Each year the VA's Department of Medicine and Surgery spends approximately $1.2 billion to purchase needed medical supplies, pharmaceuticals, and equipment to run its 172 hospitals, 117 nursing homes, 16 domiciliaries, 229 outpatient clinics, and other facilities. In 1983, the President's Private Sector Survey on Cost Control, otherwise known as the "Grace Commission", proposed certain changes in the VA's procurement program. As a result, on August 8, 1984, the VA contracted with Coopers and Lybrand (C&L) to conduct a study on the effectiveness and efficiency of the VA's medical procurement and supply program. The C&L study, entitled "A Comparative Study of VA and Private Sector Procurement, Contracting and Distribution of Medical Supplies and Non-Perishable Subsistence", was completed on September 30, 1986.

The C&L study described the VA's current procurement system, compared it to private sector programs and made recommendations which would improve the VA system and reduced the cost of medical and pharmaceutical items. Currently, the VA procures medical and pharmaceutical supplies through several primary sources. VA medical centers are generally required to purchase items through the VA's supply depots. The VA operates three supply depots—located at Hines, Illinois; Bell, California; and Somerville, New Jersey—to receive, store, and distribute medical supplies, equipment, subsistence items, and pharmaceuticals. The depots serve to consolidate the supply needs of medical centers and to provide a cost-effective procurement mechanism. The VA's Marketing Center, also located at Hines, is responsible for purchasing the items for the supply depots. In 1984, the supply depots stocked about 1,650 items and supplied VA medical centers with about $256 million worth of such items.

According to C&L, the supply depots provide the most cost-effective method of purchase; yet only 16 percent of the total items purchased by the medical centers are received through the depots. One reason for this very low utilization rate appears to be that medical centers have lacked the automation capability to assess their needs adequately. Therefore, there is often not sufficient time to allow the supply depots to fill the order and transport the needed items.

Another procurement source is the Federal Supply Schedule (FSS). According to C&L, although the FSS is used throughout the Federal Government and is designed to be a favorable purchasing mechanism, items are often procured at unfavorable prices. This occurs because no "bulk discounts" are provided for large volume purchases.

Finally, VA facilities are currently authorized to purchase items through local procurement. C&L found this generally means that VA facilities purchase items without the benefit of prearranged or negotiated contractual agreements with suppliers—that is, on the open market as a one-time, nonpreferred customer. Although VA policy is to use local purchase only as a last resort, C&L found that 38 percent of medical supplies and 17 percent of pharmaceuticals are purchased in this manner. The VA spent a total of about $900 million on local purchases in fiscal years 1984 and 1985. C&L determined that items obtained through this method are 25 to 50 percent more expensive than if purchased through the VA's supply depots and that this method is the most costly way to purchase items. In contrast, private sector hospitals—which generally use more innovative procurement policies—rarely purchase in this manner.

C&L made several recommendations to achieve the lowest cost procurement and supply methods. These recommendations included: (1) the implementation of a program of standardization of medical and pharmaceutical items; (2) the use of multiyear contracting in certain situations; (3) the expanded use of national contracts; (4) the reduced reliance on FSS; (5) the modernization of supply automation systems; and (6) improvement of management and control of the transportation function.

Standardization of medical and pharmaceutical items is a most important step in the making of improvements in the VA's procurement program. The purpose of standardization is to reduce the number of different types and brands of items which are used to serve the same purpose. For example, currently there are about 140 different brands of specimen cups which are available on the open market. The VA currently has contracts on about 40 different brands and stocks about 24 of them in its supply depots. In practical terms, this means that the VA will not obtain the best price because the volume of purchase will be reduced due to the great variety of brands being purchased for the same functional item. Further, the need to store many items which are functionally the same results in less efficient use of the VA's limited warehouse space in its supply depots. Under the standardization program, the VA would, with input from its health care professionals, choose to purchase and stock a limited number of items that serve the same purpose. According to C&L, this reduction would serve to increase the VA's purchasing power, and thus, decrease procurement costs significantly.

The private sector is moving quickly toward standardization. C&L reported that Humana, Inc., a private sector, for-profit healthcare delivery corporation comprised of about 90 hospitals containing 20,000 hospital beds, has implemented this program and plans to standardize 85 percent of all medical supplies and reduce overall item costs by 17 percent. C&L reported that, as a result of the implementation of standardization, Humana has saved approximately $57 million over three fiscal years. Since the VA medical-care system is four times larger than Humana, one can reasonably project that, over a comparable period, savings of hundreds of millions could result from standardization within the VA.

On July 9, 1986, the VA established a "Coopers and Lybrand Implementation Steering Committee," which was charged with developing a plan to implement the C&L recommendations. Following the final drafting of a circular (ultimately issued on September 9, 1987, Circular 00-87-23) which set forth the VA's guidance on its standardization program, the aforementioned Committee was disbanded on July 2, 1987.

The VA's Chief Medical Director (CMD) testified at the May 21 hearing that the VA is "already implementing a standardization program in the procurement process." The VA further stated, "At present, for the initial pilot test of the standardization program, VA is reviewing 32 classes of medical and pharmaceutical items for possible standardization." The VA concluded that it believed "this legislation is unnecessary." Finally, the VA recommended that it be provided with the authority to use multiyear contracts.

Committee bill

Under the Committee bill, the provisions of S. 631 as introduced were modified to take into account additional information which was received during and as a result of the Committee's May 21, hearing. Section 345 of the Committee bill would require the Administrator, not later than the beginning of the third fiscal year beginning after the date of enactment, to develop and fully implement an agency-wide plan for the cost-effective standardization, in a manner consistent with the effective furnishing of health-care services, of medical and pharmaceuticals items procured by the VA. The plan would be required to provide for the procurement of generic pharmaceutical items where such procurement is more cost-effective than procurement of a name-brand pharmaceutical item, except where the VA's Chief Medical Director, after consultation with the Food and Drug Administration, determines that an equivalent generic item is not available or is necessary in the interests of effective patient care.

Although the VA is required to complete the standardization process within 3 years, the Committee expects the VA to continue to move forward with standardization as rapidly as is feasible. In order to ensure successful implementation, the Committee urges the VA to develop its implementation plans with the active participation of VA health-care practitioners as well as personnel from the BA's supply depots and the Marketing Center. Following the completion of the standardization program, the Committee believes that the VA should maintain a mechanism to provide for the continuing review of new medical and pharmaceutical items for possible standardization.

Section 346 of the Committee bill, would add a new section 5025 to require the VA to procure medical and pharmaceutical items only under national contracts except where (1) the item is not available under national contract; (2) the item is needed for the effective furnishing of health-care services or the conduct of research or education at a VAMC as determined by the director of the center in accordance with regulations prescribed by the CMD; or (3) a need for an emergency procurement has arisen. Except in the situation of emergency need—when the medical center would be permitted to purchase no greater amount than is reasonably necessary to meet the emergency need until resupply can be achieved—not more than 20 percent of all medical and pharmaceutical items procured by the VA in any fiscal year would be permitted to be procured under local contracts. That percentage would be measured as a percent of the total cost of all medical and pharmaceutical items procured by the VA nationwide in that fiscal year. Such local contracts, to the maximum extent feasible, would be required to be awarded to dealers or manufacturers regularly engaged in the wholesale supply of those items. In order to provide some flexibility in the area of local contracts, if it is determined by the President (or, upon delegation, by the Director of the Office of Management and Budget), based upon the VA's experience during the preceding two years, that a higher percentage is necessary for the effective furnishing of health-care services, the percentage could be increased to not more than 30 percent.

The Committee recognizes that the medical centers may in certain cases legitimately prefer not to purchase through the national contracts. However, the Committee believes that local purchase should be limited. In order to assess fully the impact of these provisions, the Committee bill would require (1) each medical center to submit, on December 1 of each fiscal year (beginning on December 1, 1988) a report on local procurement contracts during the previous fiscal year, and (2) the Administrator to submit to the Committees on Veterans' Affairs not later than February 1 of each year (beginning on February 1, 1989) a report on the Agency's experience in the procurement of medical and pharmaceutical items during the previous fiscal year, including a summary of quantity and cost of items procured at VAMCs under local contracts.

The Committee bill would specifically provide that surgical instruments are not considered medical and pharmaceutical items for the purposes of these sections.

Finally, section 347 of the Committee bill would generally authorize the VA to use multiyear procurement contracts except where such contracts would interfere with the maximum effective procurement of generic drugs. This provision was added to the Committee bill at the request of the VA. Specifically, the Administrator would be authorized to enter into a multiyear contract if the Administrator determines that (1) appropriations are available and adequate for obligations necessary to provide for either (a) the total payments required during the full term of the contract or (b) the total payments during the fiscal year in which the contract is entered into plus cancellation charges payable under the contract; (2) the contract is in the best interest of the government in that the contract would reduce costs, achieve economies in contract administration, increase quality of service from the contractor, or encourage competition; (3) there is an ongoing need for the particular items or services being procured and no substantial likelihood of changes in the need for the supply and the specifications are expected to remain relatively stable; (4) the risks associated with the contractor's ability to comply with the contract are not excessive; (5) use of a multiyear contract will not inhibit the capability of small businesses to compete; and (6) in the case of the procurement of a pharmaceutical item for which a patent has expired less than 4 years before the date on which the solicitation of offers is issued, there is no substantial likelihood that increased competition among potential contractors would occur during the term of the contract as the result of the availability of generic equivalents increasing during the terms of the contract.

A multiyear contract would be required to provide (1) that the government's obligation under the contract is contingent on the availability of financial resources, and (2) that there be payment of reasonable cancellation charges to compensate the contractor if the contract is cancelled due to lack of such resources.

TITLE IV—MISCELLANEOUS PROVISIONS

Prohibition on Excessing of VA Lands in Southern California

Section 401 of the Committee bill, which is derived from section 10 of S. 6, would prohibit the Administrator from taking any action to declare as excess to the needs of the VA, or otherwise take any action to dispose of, the land and improvements at the Veterans' Administration Medical Center in West Los Angeles, California (consisting of approximately 109 acres), and at the Veterans' Administration Medical Center in Sepulveda, California (consisting of approximatley 46 acres).

Background

This provision is substantively identical to a measure introduced in the 99th Congress (S. 2141) by the Committee's then-Ranking Minority Member, Senator Cranston, and Committee members Matsunaga, DeConcini, Mitchell, and Rockefeller to counter the Administration's proposal to dispose of the aforementioned lands.

On February 5, 1986, despite internal VA objections, the then-Acting Administrator, pursuant to OMB direction, sent letters to the House and Senate Committees on Veterans' Affairs announcing his intention to declare various parcels of land at these two Southern California facilities to be "no longer needed by the Veterans' Administration in carrying out its functions". Under subsection (d) of section 5022 of title 38, no VA property may be declared excess by the Administrator and disposed of by General Services Administration (or other Federal entity) unless the Administrator has determined that the property "is no longer needed by the Veterans' Administration in carrying out its functions", and under subsection (a)(2) of that section VA land cannot be declared excess and transferred to GSA until the expiration of a 180-day period beginning on the date that the VA submits to the Veterans' Affairs Committees a report of the facts concerning the proposed transaction. If declared excess by the VA, property is then disposed of by the GSA under government-wide disposal guidelines. On June 6, 1986, the current Administrator submitted a modification of the February 5, 1986, proposal reducing the amount of land to be excessed at the West Los Angeles facility from 109 to 80 acres and at the Sepulveda facility from 46 to 32 acres.

On June 26, 1986, during the Committee's consideration of its 1986 compensation and health-care legislation (S. 2422), Senator Cranston proposed an amendment, derived from S. 2141, which would have prohibited the Administrator from taking any action to declare as excess to the needs of the VA, to transfer to another Federal agency, or otherwise to relinquish any VA interest in, any portion of those parcels of land. This amendment failed in Committee on a 5-to-5 vote.

However, the House approved a provision in H.R. 4623 to prohibit the disposal of these lands, and a compromise was enacted in section 234 of Public Law 99-576 on October 28, 1986, to prohibit the

VA temporarily from proceeding with the plan to dispose of the property.

Basically, section 234 of that public law prohibited the Administrator from taking any action before January 1, 1988, in connection with declaring the properties as excess, or with transferring them, relinquishing the VA's interest in them, or disposing of them, and nullified any such action taken prior to that date—namely, the February 5, 1986, letters and June 6, 1986, modification thereof. In effect, under the 180-day delay period in current section 5022(a)(2) this precludes the VA from taking any steps to dispose of these properties until July 1988 since the earliest date the VA could declare the property as excess to its needs would be July 1, 1988—6 months after the earliest date, January 1, 1988, on which a new section 5022(a)(2) notice could be submitted.

Committee bill

Section 401 of the Committee bill would permanently prohibit the Administrator from taking any action to dispose of the VA properties.

The Committee believes that there are numerous strong reasons for the VA to retain these lands. First, these parcels provide important buffer zones between the facilities and the surrounding communities. The Committee believes that not all urban properties should be developed; open space is a valuable commodity, especially in highly congested areas such as West Los Angeles.

Second, retention of these lands also ensures latitude for possible future uses such as; according to a 1986 VA Task Force report, a possible new State veterans' home, recreational facilities for veterans, and joint-venture projects with the University of California at Los Angeles (UCLA) or others. The State of California Department of Veterans' Affairs is actively pursuing the possibility of constructing a new State nursing home on the West Los Angeles property. In addition, a December 29, 1986, letter to the Chairman from Elwin V. Swenson, UCLA's Vice Chancellor for Institutional Relations, noted that some of the possible joint-venture projects include an expansion of the nursing home care program, including a mental health component, a specialized adult-day-care program, the establishment of a pathology reference laboratory, a child-care facility, and other programs that the medical staff of the VA and the UCLA faculty are discussing but on which they had not reached a specific recommendation.

Third, in addition, a major portion of the land in question at West Los Angeles is either part of a deep ravine or separated from the facility by the ravine. Without massive landfill, this land is unattractive and difficult to utilize and would not have the commercial value OMB has attributed to it. The Administration's estimated value for the 109 acres is $125 million. Even considering general local real estate market trends in West Los Angeles, this estimate appears to be excessive given the condition of the land. In addition, the VA has used the ravine for waste disposal, including remnants of an old VA hospital that once stood on an adjacent site. This would compound problems for any developer since the contaminated soil would need to be removed and the substructure of the land shored up before landfilling is begun. Additionally, the parcel includes an area where the VA once disposed of radioactive waste, and digging in the area could be hazardous.

Fourth, conditions exist that suppress the market value of the property, including in the case of West Los Angeles a county moratorium on new "access cuts" into Wilshire Boulevard. Also, the zoning for the VA land is "open space", and no development could be undertaken without a zoning variance—which is highly unlikely given the opposition of both the Los Angeles County Board of Supervisors and City officials. An August 15, 1986, letter prepared by the County Counsel of Los Angeles to the County of Los Angeles Board of Supervisors raised serious questions about the zoning applicable to the property and specifically the status of "the restrictive open space regulations" under the County general plan.

Fifth, the major veterans' organizations—both nationally and in the State—have expressed and continue to express vigorous opposition to any excessing of this land. The statement of E. Philip Riggin, Director, National Legislative Commission, and Robert Lyngh, Director, National Veterans' Affairs and Rehabilitation Commission, The American Legion, at the Committee's May 21 hearing is representative of opposition to the excessing of the West Los Angeles land:

> Mr. Chairman, The American Legion will continue to oppose the transfer of any portion of the land herein discussed to anybody, for any purpose other than to continue to provide care to veterans. The complex of land described herein encompasses a wide variety of activities for the care of perhaps the largest single concentration of veterans to be found in the nation. There is no possibility that the scale of veterans activities now being carried on at West Los Angeles will be in any way scaled down for the foreseeable future. Therefore, Mr. Chairman, The American Legion fully supports this proposal to enact a permanent solution to this situation.

Sixth, the surrounding West Los Angeles and Sepulveda communities strongly oppose the additional major construction activity and the resultant development that would occur, as well as the disruption of a number of existing leases and agreements with the VA regarding the use of some of the land proposed for excessing.

In short, the only reason supporting the excessing of these properties is some increase in revenues to the Federal Government at some distant point in time. And it seems clear that the proceeds of any sales—especially in the case of West Los Angeles, where tremendous barriers to development exist—would be far less than the Administration has projected. The Committee believes that this speculative revenue possibility is far outweighed by the adament community and veteran's organization opposition, the depressed value and condition of the land, its current "open space" zoning, and the fact that the Administration has failed to demonstrate convincingly that the land could not be used for such purposes, or a combination thereof, a State Veterans' Home, veterans' recreation, joint projects with medical schools, or VA as a cemetery expansion.

Grave Markers in National Cemeteries

Section 402 of the Committee bill, which is derived in part from section 401 of S. 917, an Administration proposal, would amend section 1004 of title 38 to give the Administrator discretionary authority, upon the recommendation of the Chief Medical Director, to waive the general requirement for upright grave markers in a VA national cemetery if the Administrator determines that the use of upright markers would have a detrimental effect on the health of veterans receiving care at a nearby VA health-care facility. This section would also amend section 1004 to mandate, with respect to all interments occurring after the date of enactment, the use of flat markers at the National Cemetery in Riverside, California, and the proposed national cemetery in Northern California.

Under current law—subsection (c) of section 1004 of title 38, which was enacated on October 28, 1986 (in Public Law 99-576)—upright grave markers are required to be used for all interments in national cemeteries, except that flat markers may be used in cemeteries scheduled to be closed by September 30, 1991, and in cemetery sections which had flat markers on October 28, 1986.

In June 1985, the VA Medical Center at Wood, Wisconsin, transferred approximately 12 acres of land to the VA's Department of Memorial Affairs for expansion of an adjacent national cemetery. In a March 9, 1987, letter to the President of the Senate transmitting draft legislation to exempt the Wood cemetery from the upright-markers requirement, the Administrator expressed the agency's concern "that upright grave markers will be more conspicuous from the nearby medical center, and could adversely effect patient care."

However, the VA health-care facility in Wood is not unique in being located in proximity to a national cemetery; there are several other VA health-care facilities where that is also the case. Thus, rather than a specific exemption to the general requirement for upright markers, the Committee has proposed a provision of general applicability giving the Administrator the authority, upon the recommedation of the Chief Medical Director, to waive the requirement for upright markers wherever necessary in order to avoid a detrimental effect on the health of patients at a nearby VA health-care facility.

The national cemetery in Riverside, California, was designed to accommodate flat grave markers in order to maintain harmony with its surroundings. There is strong local support, as evidenced by a proclamation received by the Committee from the Riverside County Board of Supervisors, expressing opposition to the application to the Riverside Cemetery of that portion of Public Law 99-576 (section 411) requiring upright grave markers. Additional support for an exception to the requirement for the use of upright markers at the Riverside cemetery and support for an exception for the proposed national cemetery in Northern California was received from the California State Department of the Veterans of Foreign Wars additionally in response to a question posed by the Committee Chairman in connection with the Committee's June 30, 1987 hearing. The American Legion, the Disabled American Veterans and the Veterans of Foreign Wars indicated they were not opposed to these exemptions.

Lease of Former VA Hospital in Minot, ND

Section 403 of the Committee bill, which was added at the request of Senator Quentin Burdick of North Dakota, would require the VA, upon certain conditions being met, to lease to the United States Department of Labor (DOL) for nominal consideration, for use as a Job Corps Center, 20.6 acres and the buildings thereon located in Minot, North Dakota, where the VA formerly operated a hospital.

Background

Since 1959, the VA has been leasing to the Air Force, at no cost, for use as a regional hospital the 20.6 acres and improvements thereon that the VA previously used for the VA Hospital, Minot, North Dakota, which ceased operating that year. The Air Force is now building a new hospital at a nearby locations and will be vacating the property by May 1988. By letters dated March 30, 1987, the VA advised the House and Senate Committees on Veterans' Affairs that the 20.6 acres and improvements thereon were determined to be excess to the VA's needs.

The Job Corps program, conducted under sections 1691 through 1709 of title 29, United States Code, assists disadvantaged young males and females, age 16 through 21, who need and can benefit from a wide range of services in the residential setting of a Job Corps Center. These services include education, vocational skills training, counseling, health care, and related supportive services.

North Dakota is one of only eight states that do not have a Job Corps Center and the North Dakota Job Service strongly supports the establishment of one to serve North Dakota's disadvantaged youth as both residential and nonresidential students. Approximately 300 young men and women recruited in North Dakota currently attend Job Corps training at one of 6 centers located in Montana, South Dakota, and Utah.

Committee bill

Under the Committee bill, the Administrator, if certain conditions are met, would be required to lease to the DOL for nominal consideration the 20.6 acres now occupied by the Air Force for the John Moses Air Force Hospital and on which the VA Hospital, Minot, North Dakota, was formerly located. The conditions for the transfer would be as follows:

1. Sufficient funds must be appropriated to the Department of Labor for fiscal year 1988 to establish a Job Corps Center in North Dakota.
2. The property must be selected by the Labor Department for the establishment of a Job Corps Center in fiscal year 1988.
3. The Department must agree to use the property for a Job Corps Center for the duration of the lease.

Under the Committee bill, the lease to the DOL would be renewed for nominal consideration for successive 10-year periods at the request of the Secretary of Labor.

In summary, the Committee believes that these provisions would promote a prudent use of public lands, an investment in human resources through the training of disadvantaged youth, and a sound Federal-state cooperative venture.

Native Hawaiian Representation on the Advisory Committee on Native-American Veterans

Section 404 of the Committee bill would amend section 19032 of Public Law 99-272 so as to add a representative of veterans who are Native Hawaiians to the VA's Advisory Committee on Native-American Veterans; to require the advisory committee to submit to the Administrator by February 1, 1989, a third report, in addition to the February 1, 1987, and 1988, reports under current law; and to extend the life of the advisory committee by one year, until 90 days after its submission of the February 1, 1989, report rather than after the February 1, 1988, report.

Under current law, the advisory committee includes representatives of Native Americans who are American Indians and Alaska Natives. In the Committee's view, the same reasoning behind establishing the advisory committee and requiring that its membership include those two groups of Native Americans support the proposed expansion of the advisory committee to include representation of Native Hawaiians.

The Committee expects the advisory committee, in its third report, to include a focus on the needs of veterans who are Native Hawaiians.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (CBO), estimates that the costs resulting from the enactment of the Committee bill (as compared to costs under current law) during the first 5 years following enactment would be $406 million in budget authority and $407 million in outlays in FY 1988; $481 million in budget authority and $555 million in outlays in FY 1989; $475 million in budget authority and $548 million in outlays in FY 1990; $467 million in budget authority and $547 million in outlays in FY 1991; and $457 million in budget authority and $530 million in outlays in FY 1992. The cost estimate provided by CBO, setting forth a detained breakdown of the costs, follows:

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

November 9, 1987

Honorable Alan Cranston
Chairman
Committee on Veterans' Affairs
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In response to your request, CBO has prepared the attached cost estimate for S.9, the Omnibus Veterans' Benefits and Services Act of 1987, as ordered reported by the Senate Committee on Veterans' Affairs, July 31, 1987.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

James Blum

for Edward M. Gramlich
Acting Director

cc: Honorable Frank H. Murkowski
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

November 9, 1987

1. BILL NUMBER: S.9

2. BILL TITLE:

The Omnibus Veterans' Benefits and Services Act of 1987.

3. BILL STATUS:

As ordered reported by the Senate Committee on Veterans' Affairs, July 31, 1987.

4. BILL PURPOSE:

To increase the rates of disability compensation and of dependency and indemnity compensation and to improve other benefit programs for veterans.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

	(By fiscal years, in millions of dollars)				
	1988	1989	1990	1991	1992
Function 550					
Budget Authority	2	2	2	2	2
Estimated Outlay	2	2	2	2	2
Function 700					
Budget Authority	404	479	473	465	455
Authorization Level	39	74	72	79	72
Estimated Outlays	405	553	546	545	528

The effects of this bill would fall in budget functions 550 and 700.

Basis of Estimate

The following section-by-section cost analysis only addresses those sections of the bill that would be expected to have a significant budgetary impact.

Title I.

Section 101: This section would authorize an increase in the monthly rates of disability compensation and dependency and indemnity compensation (DIC) by a percentage equal to the increase in Social Security benefits that occurs on December 1, 1987. The compensation increase would also be effective on December 1, 1987.

	(By fiscal years, in millions of dollars) 1988	1989	1990	1991	1992
Cost to Current Law:					
Budget Authority	360	426	418	410	403
Estimated Outlay	325	426	419	411	404
Cost to Resolution Baseline:					
Budget Authority	9	10	10	10	10
Estimated Outlays	8	10	10	10	10

The Social Security Administration has announced that the cost-of-living adjustment (COLA) in Social Security benefit rates that will take effect on December 1, 1987, will be 4.2 percent. The cost of this provision to current law, under which no increase in compensation rates would occur, is the full cost of a 4.2 percent increase. The budget resolution baseline, however, assumed that compensation rates would be increased by 4.1 percent. Therefore, the cost of this proposal over the resolution assumptions is only the additional cost of the slightly higher COLA. Finally, in comparison with the October budget baseline, no increase in cost would occur because the October baseline assumed a 4.2 percent COLA.

The above estimates were calculated by multiplying the average costs in each year for all disability compensation and for all DIC cases by 4.2 percent. The resulting average increase in costs per year were then multiplied by the estimated number of cases in each program each year to calculate the annual cost. Future average cost and caseload levels were projected according to historical trends for recipients by period of service.

Section 102. This section would increase from $35,500 to $40,000 the maximum grant available for specially adapted housing for severely disabled veterans. The increase would be effective retroactively to October 1, 1987.

	(By fiscal years, in millions of dollars) 1988	1989	1990	1991	1992
Budget Authority	2	2	2	2	1
Estimated Outlays	2	2	2	2	1

Based on historical trends, the estimate above assumes that the number of grants in this program will fall from about 425 in 1988 to around 305 in 1992. The average grant is assumed to increase by the same percentage that the maximum grant would be raised.

Section 104. This section would increase from $1,100 to $2,250 the ceiling on burial benefits paid on account of service-connected deaths. This increase would be effective retroactively to October 1, 1987.

(By fiscal years, in millions of dollars)

	1988	1989	1990	1991	1992
Budget Authority	10	11	12	12	13
Estimated Outlays	10	11	12	12	13

The above estimate assumes that the number of service-connected burial benefits will rise from about 9,500 in 1988 to around 11,100 in 1992, based on historical trends. The projected caseload was multiplied by the increase in the benefit ceiling to derive the cost of this provision.

Section 114. This section would extend indefinitely the exemption of benefits under chapters 31 and 35 of title 38 (U.S.C.) from any sequestration of funds.

Enactment of this provision would have no net impact on the federal budget. Since the deficit targets established by Public Law 100-119, the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 would not be changed by the provision, any required outlay reductions that are not achieved in the programs exempted by section 114 would have to be made elsewhere in the budget.

TITLE II.

Sections 202-206. This title would provide certain benefits to veterans and the survivors of veterans who participated in the occupation of Hiroshima and Nagasaki or in nuclear weapons testing and who subsequently developed certain forms of cancer. Three categories of benefits would be provided:

- Monthly benefits equal to those paid under the disability compensation and the dependency and indemnity compensation programs would be paid for any exposed veteran with cancer of the thyroid or leukemia (excluding chronic lymphocytic leukemia).

- Monthly benefits equal to those paid under the disability compensation and the dependency and indemnity compensation programs would be paid for any veteran exposed to more than one rem of radiation who develops cancer of the small intestine, stomach, liver (where cirrhosis or hepatitis B is not indicated), bile ducts, gall bladder, pancreas, lymphoma (excluding Hodgkins' lymphoma), or multiple myeloma.

- The final category of veterans would not be granted benefits outright, but they would have their official radiation exposure estimates increased by a formula that is based on the overall exposure of members of the veteran's branch of service in the particular operation. The VA would be directed to give "special consideration" to claims for compensation benefits from exposed veterans and the survivors of veterans who develop cancer of the lung, colon, esophagus, rectum, pharynx, liver (where cirrhosis or hepatitis B is indicated), kidney, urinary tract, bladder, brain, nervous system, salivary glands, bones, joints, and cutaneous melanoma.

These provisions would take effect on January 1, 1988, but no new claims for benefits could be accepted after September 30, 1991.

(By fiscal years, in millions of dollars)

	1988	1989	1990	1991	1992
Budget Authority	32	40	41	41	38
Estimated Outlays	29	40	41	41	38

The cost of the benefits provided by these sections was estimated using a computer model that operates on data from a variety of sources. The number of veterans participating in the occupation and nuclear testing distributed by date of exposure was supplied by the House Veterans' Affairs Committee staff. The normal incidence and one- through five-year relative survival rates for the specified cancers in the general population of males aged 55 and older was supplied by the Demographic Analysis Section of the National Cancer Institute (NCI). Remarriage and death rates for the surviving spouses were taken from census data involving widows by age group in the general population.

The estimate is also dependent on a number of assumptions, the most critical of which is that the veterans in the exposed population contract these diseases at the same rate as their non-veteran counterparts in the general population. Should these diseases be more prevalent among radiation-exposed veterans, the cost of this bill could be higher than shown above. It was also assumed that virtually all deaths among the cancer patients would be considered service-connected, thus qualifying the veteran's survivors for DIC benefits.

With regard to the mandated increase in dosage estimates and the requirement that the VA give "special consideration" to exposed veterans suffering from certain types of cancer, there is no way of accurately assessing in advance the impact these provisions would have on the adjudication of claims. This estimate assumes that 50 percent of the veterans whose radiation dose estimates are increased above 5 rems would be awarded compensation and/or DIC benefits.

It was estimated that these provisions would generate approximately 700 new compensation cases that were assumed to receive benefits at the rate payable for 100 percent disability. About 4,000 new DIC cases were estimated, which were assumed to receive the average benefit payable to all DIC cases under current law.

Section 207. This section would extend for two years, fiscal years 1990 and 1991, the authorization of medical care for all veterans exposed to radiation during military service.

	(By fiscal years, in millions of dollars) 1988	1989	1990	1991	1992
Estimated Authorization Level	0	0	2	2	0
Estimated Outlays	0	0	2	2	0

The above estimate is based on historical spending for this activity.

TITLE III.

Section 301. This section would authorize the VA to provide services to achieve pregnancy in a veteran or a veteran's spouse where such services are necessary to overcome a service-connected disability that causes the veteran's inability to procreate.

	(By fiscal years, in millions of dollars) 1988	1989	1990	1991	1992
Estimated Authorization Level	1	2	2	2	2
Estimated Outlays	1	2	2	2	2

The above estimate only covers the cost of two fertilization techniques utilized to relieve infertility resulting from two types of disabilities. If other disability groups qualify for services, the cost of this provision could be greater than shown above.

The estimate assumes that the 151 female veterans suffering from service-connected inflammation of the fallopian tubes would be eligible for in vitro fertilization and that approximately 40 percent of such veterans would apply for treatment. According to the VA, the average cost of a successful in vitro fertilization is around $38,000.

The estimate also assumes that the 1,665 veterans with service-connected spinal cord injuries would qualify for donor artificial insemination. It was further assumed that the 40 percent of these veterans who are over age 65 would not request the service. Of the 1,000 such veterans under age 65, it was assumed that 40 percent would request the service. The VA expects that they would make up to three insemination attempts for each couple and anticipates a success rate of 50 percent on each attempt. The agency has estimated a cost of $3,000 per insemination attempt.

Section 306. This section would require the VA to conduct a pilot program to provide under contract non-institutional alternatives to hospital and nursing home care during calendar years 1988-1991. Under the pilot program, which would be conducted in not less than 5 nor more than 10 sites, the services provided could include medical, rehabilitative, nutritional, personal care, homemaker, transportation and other services and would be designed to alleviate the need for inpatient care. The cost of operating the pilot program would be limited to 60 percent of the cost that would be incurred by furnishing nursing home care to the participating veterans.

	(By fiscal years, in millions of dollars)				
	1988	1989	1990	1991	1992
Estimated Authorization Level	4	7	9	12	*
Estimated Outlays	4	7	9	12	*

The above estimate assumes that 300 veterans would participate in the program in 1988 at ten demonstration sites, with the number of participants growing to 700 by 1991. It was further assumed that these participants would be primarily individuals on waiting lists for VA nursing home beds.

Because the cost of the alternative services is limited to 60 percent of the cost of nursing home care ($18,897 on the average per patient treated in fiscal year 1986), it would be significantly less expensive to care for veterans in this manner than as inpatients. However, since it was assumed that the pilot program participants would be selected from veterans on waiting lists for VA nursing home beds rather than from veterans already in VA nursing homes, the cost of contract home-care services would not be significantly offset by reductions in nursing home care.

Section 308. This section would require the VA to develop and publish materials containing information on AIDS, including information on preventing infection with the AIDS virus, and to distribute these materials, together with the 1986 Surgeon General's Report on AIDS, in all public waiting rooms at VA facilities, to all VA substance abuse treatment personnel, and to any VA patient believed to be at high risk for infection with AIDS.

	(By fiscal years, in millions of dollars)				
	1988	1989	1990	1991	1992
Estimated Authorization Level	1	1	1	1	1
Estimated Outlays	1	1	1	1	1

This estimate assumes that the VA would incur costs of about $500 thousand in developing materials on AIDS. After development, printing and distribution costs are estimated to run about $500 thousand a year.

According to the Government Printing Office, one million copies of the Surgeon General's Report can be purchased for about $180 thousand. This estimate assumes that the VA would distribute between one and two million copies of the report in 1988 and 1989. After 1989, demand is expected to drop below one million, because many veterans visiting VA facilities would have already seen it.

Section 310. This section would increase the per diem rates payable by the VA for state home domiciliary, nursing home, and hospital care. It would also authorize the Administrator to increase these rates administratively in the future to reflect increases in the cost of medical care.

	(By fiscal years, in millions of dollars)				
	1988	1989	1990	1991	1992
Estimated Authorization Level	13	18	23	28	34
Estimated Outlays	13	18	23	28	34

In fiscal year 1986, the average daily census of VA-sponsored patients in state home domiciliaries was 4,322, in state nursing homes was 8,030, and in state home hospitals was 510. Based on historical trends, the number of domiciliary patients is projected to decline to about 4,000 by 1992, nursing home patients to increase to about 8,400, and hospital patients to remain about the same. It was assumed that the Administrator would adjust these rates annually in the future; increases were assumed to be equal to the rises in the Consumer Price Index for Medical Services. The projected census, multiplied by 365 days, was then multiplied by the corresponding increase in the reimbursement rate to derive the cost of the provision.

Section 312. This section would provide that per diem subsidies paid by the VA for the care of veterans in state veterans' homes would not offset reimbursements to the homes under the Medicaid program.

	(By fiscal years, in millions of dollars)				
	1988	1989	1990	1991	1992
Function 550					
Budget Authority	2	2	2	2	2
Estimated Outlays	2	2	2	2	2

Under this provision the cost of veterans' care that is covered by VA per diem payments would not be considered a third-party liability and, thus, would also be reimbursed by the Medicaid program. The estimated cost shown above represents the expected increase in federal Medicaid costs. State Medicaid costs would increase by a similar amount.

Currently, only four Medicaid-certified state nursing homes care for veterans who are Medicaid recipients. These are the state homes in Homelake, Colorado; Augusta, Maine; Oxford, New York; and King, Wisconsin. In 1985, approximately 500 veterans in these state homes were receiving Medicaid benefits. This estimate assumes that no additional state homes would apply for Medicaid certification as a result of this provision. If additional state homes should apply, the cost of this provision could be higher than stated above.

Section 315. This section would authorize the VA to conduct a two-year pilot program to provide health-care services to eligible veterans residing in isolated rural areas through the use of mobile health-care clinics. Appropriations of $2.5 million per 12-month period are authorized.

	1988	1989	1990	1991	1992
	(By fiscal years, in millions of dollars)				
Estimated Authorization Level	*	3	2	0	0
Estimated Outlays	*	3	2	0	0

This estimate assumes that the full amount authorized would be appropriated. Outlays were estimated according to historical spending patterns for similar activities.

Section 325. This section would authorize the payment of Saturday premium pay to VA nurses in those areas where it is needed for retention and recruitment.

	1988	1989	1990	1991	1992
	(By fiscal years, in millions of dollars)				
Estimated Authorization Level	20	21	22	23	24
Estimated Outlays	20	21	22	23	24

According to VA staff, the agency would utilize Saturday premium pay to the same extent as Sunday premium pay is now used, thereby doubling the cost of premium pay. The above estimate represents a projection of the cost of Sunday premium pay based on historical trends.

Section 326. This section would amend the authorization for the VA Health Professional Scholarship Program to include a tuition reimbursement program for full-time nursing personnel. However, an individual could not simultaneously receive tuition reimbursement and the salary bonuses authorized in section 327 of this bill.

It is not expected that this section would result in a significant increase in cost for several reasons. The primary restraint on the use of tuition reimbursement would be the salary bonuses also authorized in this bill. Since the authorized bonuses could be as high as $20,000 over four years, few nurses would be expected to opt instead for tuition reimbursement, which is limited to $2,000 a year. Also, the VA has made very limited use of the scholarship program in recent years. No new scholarships were granted in 1986 or 1987, despite a growing nurse shortage, and only 260 new scholarships were granted in 1985. Thus, there is little evidence that the VA would make any greater use of the tuition reimbursement program.

Section 327. This section would authorize the payment of salary bonuses of up $20,000 over 4 years for the recruitment and retention of certain health-care personnel.

	(By fiscal years, in millions of dollars)				
	1988	1989	1990	1991	1992
Estimated Authorization Level	0	23	12	12	12
Estimated Outlays	0	23	12	12	12

According to VA staff, it takes the agency a full year to implement a new special pay measure. The estimate above, therefore, assumes that no bonuses would be paid during fiscal year 1988. The estimate further assumes that bonuses would only be offered in medical facilities experiencing a personnel shortage of at least 10 percent. Vacancy data as of April 1987 indicate that 15 VA facilities had nursing vacancy rates in excess of 10 percent. This level was assumed to remain constant throughout the projection period. The estimate also assumes that nurse staffing levels in facilities paying bonuses would expand to the full FTEE ceiling as a result of the bonuses.

Section 328. This section would institute a system of "on-call" pay for VA health-care employees who are paid under the provisions of title 5 (U.S.C.), as a substitute for "stand-by" pay.

	(By fiscal years, in millions of dollars)				
	1988	1989	1990	1991	1992
Estimated Authorization Level	-1	-1	-1	-1	-1
Estimated Outlays	-1	-1	-1	-1	-1

Under the stand-by pay system, an employee who, in the last year, has spent an average of 28 or more hours a week on stand-by in addition to his/her basic work week is routinely paid basic pay plus 25 percent of basic pay, regardless of the number of stand-by and call-back hours actually worked in a given week. Under the proposed on-call system, an employee would be paid 10 percent of the hourly overtime rate for each hour spent on-call, plus the full overtime rate for each hour spent on call-back. In most cases, it is expected that costs would be lower under the on-call system, as well as being more closely tied to actual work hours involved. In addition, on-call pay, unlike stand-by pay, is not counted as basic pay for the Civil Service or Federal Employees Retirement Systems. Nor is on-call time subject to the requirements of the Fair Labor Standards Act. These two exemptions would further reduce the cost of an on-call system.

The actual cost of stand-by pay in fiscal year 1986 was $5.8 million. According to VA estimates, on-call pay would cost approximately 74 percent of the cost of stand-by pay, or about 4.3 million a year. The net savings of about $1.5 million would be offset to a small extent by increased costs in a few facilities where some staff members are performing overtime stand-by duty on a voluntary basis.

Section 332. This section would require the VA to conduct an in-depth study of pay and other personnel management issues in the Department of Medicine and Surgery.

	(By fiscal years, in millions of dollars)				
	1988	1989	1990	1991	1992
Estimated Authorization Level	1	0	0	0	0
Estimated Outlays	1	0	0	0	0

The cost estimated for this study is based on the cost of studies of similar scope conducted in the past.

Section 346. This section would mandate two major changes in the process by which the VA procures medical and pharmaceutical supplies. It would require the VA to develop and implement an agency-wide plan for the standardization of all such supplies. The VA would also be required to establish national purchase contracts for virtually all supplies purchased by VA medical facilities. Purchases under local contracts would be limited to no more than 20 percent of all supplies purchased in a year.

For the last year, the VA has been in the process of implementing these and other procurement reforms on an administrative basis. They expect to achieve the goals established by section 346 well within the mandated schedule. Thus, enactment of this provision would not affect the on-going reform of the VA procurement process.

Title IV

Section 401. This section prohibit the VA from declaring as excess real property sites in West Los Angeles and Sepulveda, California. Under current law, a federal agency declares a property to be in excess of the needs of the agency in preparation for disposing of the property. It is first offered to other federal agencies, and, if not requested, it is transferred to the General Services Administration (GSA) for sale. The VA, however, must notify the Congress at least six months before declaring a property excess.

This provision is estimated to have no impact on the CBO baseline, because the baseline reflects historical trends in property sales, rather than site-specific sales projections. Historically, sales of VA properties have been quite small, despite the fact that the VA owns a considerable amount of real property that is not being used to care for veterans. In fact, GSA data shows that of the $315 million in property sales over the past three years, only about three million has come from VA properties. The actual cost of this provision could be substantial, however, since the two properties specified by section 401 have been appraised by GSA at $200-$220 million.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS:

The impact of S.9 on state and local governments is discussed in the section-by-section analysis above. See particularly sections 310 and 312.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE: None.

9. ESTIMATE PREPARED BY: K.W. Shepherd (226-2820).

10. ESTIMATE APPROVED BY:

James L. Blum
Assistant Director
for Budget Analysis

Regulatory Impact Statement

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact which would be incurred in carrying out the Committee bill. The Committee finds that the Committee bill would not entail any significant regulation of any individuals or businesses or result in any significant impact on the personal privacy of any individuals and that the paperwork resulting from enactment would be minimal.

Tabulation of Votes Cast in Committee

In compliance with paragraph 7 of Rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at a July 31, 1987, meeting with respect to S. 9.

The Committee agreed to report S. 9, with an amendment in the nature of a substitute, favorably to the Senate by a vote of 11 to 0, as follows:

YEAS (11)	NAYS (0)
Alan Cranston	
Spark M. Matsunaga	
Dennis DeConcini	
George J. Mitchell	
John D. Rockefeller IV	
Bob Graham	
Frank H. Murkowski	
Alan K. Simpson	
Strom Thurmond	
Robert T. Stafford	
Arlen Specter	

During consideration of S. 9, the Committee took roll call votes on the following amendments to the Committee bill:

1. Senator Murkowski moved to strike the provisions dealing with disability and death benefits in the cases of certain veterans exposed to ionizing radiation (title II of the Committee bill) and substitute for them provisions contained in his bill, S. 453, with the addition of a provision for the service-connection of thyroid cancer, that would (1) establish presumptions of service-connection for such veterans for leukemia (except chronic lymphatic leukemia) becoming manifest within 30 years after exposure and for thyroid cancer, liver cancers, multiple myeloma, or cancer of the bone becoming manifest more than 5 years after exposure, and (2) require, for purposes of VA adjudication of the claims of such veterans or their survivors, that the veterans' exposure estimate provided by the Defense Nuclear Agency be deemed to be two times the estimated dose. The amendment was defeated by a vote of 4 to 7, as follows:

YEAS (4)	NAYS (7)
Frank H. Murkowski	Alan Cranston
Alan K. Simpson	Spark M. Matsunaga
Strom Thurmond	Dennis DeConcini
Robert T. Stafford	George J. Mitchell
	John D. Rockefeller IV
	Bob Graham
	Arlen Specter

2. Senator Murkowski moved to strike the prohibition, in section 401 of the Committee bill, against the VA taking any action to declare as excess any portion of certain lands at two VA medical centers in Southern California. The amendment was defeated by a vote of 4 to 7, as follows:

YEAS (4)	NAYS (7)
Frank H. Murkowski	Alan Cranston
Alan K. Simpson	Spark M. Matsunaga
Strom Thurmond	Dennis DeConcini
Arlen Specter	George J. Mitchell
	John D. Rockefeller IV
	Bob Graham
	Robert T. Stafford

3. Senator Murkowski moved to strike the provision, in section 313 of the Committee bill, precluding VA per diem payments to State Veterans' Homes from being considered third-party liabilities for purposes of reducing Medicaid payments to such homes. The amendment was defeated by a vote of 4 to 7, as follows:

YEAS (4)	NAYS (7)
Frank H. Murkowski	Alan Cranston
Alan K. Simpson	Spark M. Matsunaga
Strom Thurmond	Dennis DeConcini
Arlen Specter	George J. Mitchell
	John D. Rockefeller IV
	Bob Graham
	Robert T. Stafford

4. Senator DeConcini moved to strike the provision, in section 333 of the Committee bill, prohibiting the VA from carrying out drug testing of VA employees except where the testing is based on reasonable suspicion of illegal drug use or is conducted pursuant to an investigation of an accident or unsafe practice or in connection with counseling or rehabilitation through an Employee Assistance Program.

The amendment was defeated by a vote of 3 to 8, as follows:

YEAS (3)	NAYS (8)
Dennis DeConcini	Alan Cranston
George J. Mitchell	Spark M. Matsunaga
John D. Rockefeller IV	Bob Graham
	Frank H. Murkowski
	Alan K. Simpson
	Strom Thurmond
	Robert T. Stafford
	Arlen Specter

5. Senator Murkowski moved to strike the provision, in section 112 of the Committee bill, creating a presumption of service-connection for purposes of VA disability compensation and DIC for systematic lupus erythematosis that becomes manifest to the

degree of 10-percent disabling within 1 year after discharge from service. The amendment was defeated by a vote of 4 to 7, as follows:

YEAS (4)	NAYS (7)
Frank H. Murkowski	Alan Cranston
Alan K. Simpson	Spark M. Matsunaga
Strom Thurmond	Dennis DeConcini
Robert T. Stafford	George J. Mitchell
	John D. Rockefeller IV
	Bob Graham
	Arlen Specter

AGENCY REPORTS

On February 10, 1987, the Committee Chairman requested the Administrator of Veterans' Affairs for reports, setting forth the agency's views on S. 9 as introduced and S. 6. On March 3, 11, 13, and 17 and April 7 and 27, the Chairman requested the VA's views on S. 105, S. 216, S. 631, S. 713, S. 894, and S. 1002, respectively. On June 25, the Chairman requested the views of the Department of Defense on S. 1002. The agencies' views submitted in response to those requests follow.

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

JUL 23 1987

Honorable Alan Cranston
Chairman, Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am pleased to respond to your request for a report on S. 9, 100th Congress, entitled "Service-Disabled Veterans' Benefits Improvement Act of 1987."

For reasons that follow, the Veterans Administration (VA) opposes enactment of S. 9.

The measure, if enacted, primarily would provide for increases in rates of disability compensation for veterans, including the special clothing allowance for certain veterans severely disabled due to service-connected disability, and dependency and indemnity compensation (DIC) for veterans' surviving spouses and children. Further, it would expand eligibility for certain educational and rehabilitation assistance to veterans and other eligible persons with drug or alcohol abuse disabilities; increase the maximum home-loan guaranty; adjust housing, automobile, and burial assistance programs; and extend and establish certain exemptions from sequestration under "Gramm-Rudman-Hollings."

DISABILITY AND DEATH BENEFITS

Section 2 of the bill would, effective December 1, 1987, index rates of disability compensation for veterans and DIC for surviving spouses and children to the automatic cost-of-living adjustment (COLA) to take effect for social security benefits on December 1, 1987. This would provide an estimated increase in these rates by 4.2 percent. Title I of our draft bill, which you introduced at our request on April 7 as S. 940, would, if enacted, accomplish the same purpose, though the approach differs. Instead of indexing these benefit rates to this year's social security COLA, as proposed by S. 9, S. 940 would directly index them to the increase in the Consumer Price Index. Additionally, S. 940 would provide for the automatic future annual indexing of these rates to annual CPI increases, a feature not contained in S. 9.

Disability compensation benefits are payable under chapter 11 of title 38 to provide monetary relief from impairments in earning capacity suffered by veterans disabled during, or as a result of, military service. Rates of compensation vary with the degrees of disability demonstrated, and additional compensation is payable for dependents if the veteran's disability is rated 30 percent or more disabling.

Dependency and indemnity compensation benefits are payable under chapter 13 of title 38 to the surviving spouses and children of veterans whose deaths were service-connected. Payments at DIC rates may also be made if a veteran's death was not service-connected but the veteran was rated totally disabled for a specified period prior to death. Surviving spouses' DIC rates are based on the veterans' military pay grades. A surviving spouse may receive additional payments for the veteran's children under the age of 18, or if the surviving spouse is disabled. Children over the age of 18 who become helpless before reaching that age may receive DIC, as may those ages 18 to 23 attending approved educational institutions. If there is no surviving spouse, a child under the age of 18 may also receive DIC in the child's own right.

The administration of the disability compensation and DIC programs is one of the VA's most important missions. We recognize a duty to recommend periodic adjustments in monthly rates as economic conditions change. In recent years, compensation adjustments have generally been keyed to indexed COLA's in Social Security and VA pension. However, these adjustments have not been automatic. Rather, they have been accomplished by the enactment of separate public laws designed for that purpose, the last being Public Law No. 99-576 (1986). Since 1973, legislation has been enacted every year but one (1983) granting increases in these benefits to compensate for increases in the cost of living. We have consistently supported these adjustments.

The Administration strongly supports COLA's based upon actual increases in the cost of living. However, we believe the policy evident in S. 9 may best be effectuated by legislation that would provide for an automatic annual increase in compensation rates indexed to increases in the CPI. Tying compensation and DIC rates to the CPI would assure veterans and their survivors that they would receive full increases, commensurate with inflation, in a timely manner. It would also liberate Congress from the routine of regularly considering new veterans' COLA legislation, as it has been required to do virtually every year for over a decade and twice in the same year in one instance.

ADAPTED HOUSING GRANTS AND BURIAL ALLOWANCES

Section 3 of S. 9 would amend sections 802(a) and (b) of title 38 by increasing from $35,500 to $40,000 and from $6,000 to $6,775, respectively, the maximum grant for qualifying veterans to acquire or adapt housing units so as to accommodate their particular disabilities. The specially adapted housing grant under section 802(a) of title 38 is limited to 50 percent of the total cost of the house. Generally, it is designed to assist veterans who are wheelchair-bound. The section 802(b) grant, which is limited to $6,000, is to assist veterans who are blind or have lost or lost the use of both hands.

The specially adapted housing grant now provided by section 802(a), originally set at $10,000 in 1948 by Public Law No. 80-702, has been increased by various public laws thereafter. The grant was last increased, to the present $35,500, in 1985 by Public Law No. 98-543. The grant is generally computed at 50% of the cost to the veteran of a housing unit and the necessary land upon which it is situated, not to exceed $35,500. In FY 1986, when the median cost for a specially adapted house was $93,420, the maximum grant provided a veteran with 38 percent of the funds necessary to obtain a specially adapted house.

Section 4 of the bill proposes to amend section 907 of title 38 so as to increase the burial allowance for veterans who die as the result of service-connected disabilities, from $1,100 to $2,250, effective October 1, 1987. This benefit was last increased in 1978, by Pub. L. No. 95-479.

The VA recognizes a duty to consider periodic adjustments in the maximum payments available under these important programs to keep pace with changes in the cost of the underlying items.

Because benefit levels of the specially adapted housing grant were increased as recently as 1985, we cannot support adjusting these levels further. Additionally, we do not support raising the maximum burial benefit for service-connected deaths.

EDUCATIONAL AND REHABILITATION ASSISTANCE

Section 5 of S. 9 would extend the eligibility period for an eligible veteran under chapters 30, 31, 32, and 34 of title 38, and for an eligible spouse or surviving spouse under chapter 35, by proposing new criteria for a person who has a history of dependence on or abuse of drugs or alcohol. Such a person would be eligible for an extension of the training period within which to receive Veterans Administration education or rehabilitation benefits if the individual had received recognized treatment or participated in a program of rehabilitation, and the condition is under sufficient control to enable that person to pursue training, in compliance with standards to be set out in Veterans Administration regulations.

An extension would be granted if an application is received in the Veterans Administration within one year after whichever of the following last occurs: (1) the last date of the applicable delimiting period, (2) the termination of the last period of treatment or rehabilitation, or (3) the date on which applicable final regulations are published in the Federal Register. For the purposes of this legislation, the 10-year delimiting period for education programs and the 12-year basic eligibility period under the vocational rehabilitation program would not run during the lesser of (1) the period in which the person is receiving treatment or participating in a program of rehabilitation, plus any additional time the individual was prevented by the condition from initiating or completing a program of education, or (2) four years.

When an extension is granted, the delimiting or basic eligibility period applicable to the individual would again commence running on the first day after the condition is sufficiently under control to enable the individual to pursue a program of education, or the day after the fourth year of the extension, whichever first occurs.

We are not convinced that, among the various disabilities which can result from one's own willful misconduct, there is anything so different about alcoholism and drug dependence as to warrant their preferred treatment in determining educational-assistance eligibility. Furthermore, any rationalizations offered for this preferred treatment in the context of educational assistance could apply as well with respect to other benefit eligibilities. We, therefore, oppose any easing of our traditional position with regard to the adequacy of current delimiting periods.

Section 5 of S. 9 would also provide for new guidelines to be set out in Veterans Administration regulations to determine when it is suitable for a veteran or eligible dependent, with an alcohol or drug dependency disability, to commence or renew a program of education and receive Veterans Administration benefits. Due to the nature of these conditions, however, we believe it would be extremely difficult to develop any generally acceptable, useful guidelines. There are inherent problems in determining whether the claimed condition made training infeasible, the duration of any period of infeasibility for training, and whether the cause of such infeasibility found has been removed, enabling beneficial use of any extension provided. During the period of claimed incapacity due to substance usage, the veteran would not necessarily have been in contact with any health care professional or self-help group. Thus, there very likely may be no substantial, credible evidence to establish that training was not possible for long periods of time due to an alcohol or drug condition.

Some requests for extensions have claimed incapacitation for educational pursuit due to alcoholism during the entire 10-year delimiting period. There may be no method of adequately confirming such a contention. Adjudicating such a claim could mean resolution of extremely difficult questions of proof.

There remains a lack of consensus in the medical community as to exactly what symptoms represent chronic alcoholism, alcohol abuse, problem drinking, acute alcoholism, and other commonly used labels. Furthermore, it could still be extremely difficult to distinguish periodic excessive drinking or drug-taking episodes, which may not actually result in disablement, from habitual inappropriate use of alcohol or drugs which might impair educational pursuit for a substantial period of time.

The question of whether the claimant has sufficiently recovered from the claimed impairment to make productive use of benefits during an extension may also be problematic. There is a large body of medical opinion, for instance, which holds that recovery from alcoholism or drug dependence is not possible: even though the problem can be controlled through self-help or medication maintenance, the possibility of recurrence is always present.

Veterans eligible for educational assistance under the noncontributory G.I. Bill (chapter 34 program) have a limited time within which to use their remaining entitlement. The law, 38 U.S.C. § 1662(a)(3)(D), currently provides that no educational assistance allowance under chapter 34 may be provided after

December 31, 1989. Consequently, under this proposal, any extension which would go beyond the termination date of the chapter 34 program would be of no effect.

Section 5(b) of S. 9 would provide the same extension of the period of eligibility for the vocational rehabilitation program under chapter 31 as is proposed for eligible veterans under other Veterans Administration education programs affected by this section. Alcohol or drug dependence or abuse conditions are considered in determining entitlement to vocational rehabilitation services and the duration of the period during which these services may be furnished. We believe these provisions give due consideration to the factors described above and the proposed changes are not needed.

Under chapter 31 a veteran must be found to have an employment handicap which impairs his or her ability to prepare for, obtain, or retain employment consistent with his or her abilities and interests. Current regulations provide for consideration of alcoholism and drug abuse on the same basis as any other nonservice-connected disability in determining whether an impairment which causes an employment handicap exists. If a veteran's situation meets all of the conditions for a finding of employment handicap, the Veterans Administration must then determine if the veteran is within his or her period of eligibility. A veteran found to have an employment handicap has a 12-year period of basic eligibility. This basic period of eligibility may be adjusted or extended under certain conditions.

One of the conditions under which a veteran's basic 12-year period of eligibility may be adjusted is contained in subsection 1503(b)(1) of title 38. That subsection provides that the basic period of eligibility shall not run during any period within which the veteran is prevented from participating in a vocational rehabilitation program because of a medical condition which made training infeasible during all or part of the period of eligibility. This provision is administered in the same manner as similar provisions for extension of the period of eligibility under other Veterans Administration education programs. Accordingly, extensions of the period of eligibility may not be authorized because of an alcohol or drug dependence or abuse condition under this subsection.

Under another provision, subsection 1503(c) of title 38, the 12-year period of eligibility may be extended for the period needed to provide vocational rehabilitation if the veteran is found to have a serious employment handicap. The effects of alcohol or drug dependence or abuse currently are considered, in the same manner as other non-service-connected disabilities, in determining whether an extension is needed in such cases.

We believe that the existing chapter 31 provisions for considering alcohol or drug dependence or abuse conditions in determining a veteran's basic entitlement to services and need for extension of the period of eligibility for veterans with a serious employment handicap are sufficient, allowing appropriate consideration of these factors from a rehabilitation perspective.

HOME-LOAN GUARANTY PROGRAM

Section 6 of S. 9 proposes to increase the guaranty for VA-guaranteed loans from $27,500 to $36,000. We do not believe that an increase in the guaranty is necessary. The present guaranty of $27,500 is sufficient to support no-downpayment loans of up to $110,000 for sale in the secondary mortgage market. The average VA loan amount in FY 1986 was $70,912. Therefore, the present $27,500 maximum entitlement was sufficient to provide a 38.78 percent guaranty on the average loan, which is well in excess of the 25 percent coverage required in the secondary market.

AUTOMOBILE ASSISTANCE ALLOWANCE

Section 7 of the bill proposes to increase the automobile allowance for severely service-disabled veterans. The allowance would increase from $5,000 to $5,530, effective October 1, 1987. The last increase in the amount of the allowance was made in 1985, by Pub. L. No. 98-543. As with the other important programs discussed, the VA recognizes a duty to consider periodic adjustments in the maximum payments available under this program to keep pace with the changes in the costs of underlying items. However, because this benefit was last increased in 1985, we cannot support an increase in the automobile allowance.

EFFECTIVE DATES

Sections 3 through 7 of the bill would be effective October 1, 1987.

EXEMPTIONS FROM SEQUESTRATION

Section 8 of S. 9 would permanently exempt benefits under chapters 31 and 35 from sequestration under the provisions of part

C of the Balanced Budget and Emergency Deficit Control Act of 1985 ("Gramm-Rudman-Hollings"). Chapters 31 and 35 authorize the vocational rehabilitation program and the survivors' and dependents' educational assistance programs, respectively. Public Law No. 99-576 provided exemption from sequestration for these benefits for fiscal year 1987 only. Section 8 of S. 9 would also exempt the loan guaranty program from sequestration.

The balanced-budget Act was a courageous attempt by the Congress to reduce Federal deficits that adversely affect all Americans, veterans included. The Congress bound itself to either adopt budget resolutions that will eventually eliminate the deficit or, failing that, to authorize broad sequestrations of funds to assure that Federal outlays do not exceed specified targets. While it was hoped that future sequestrations would not be necessary, the framers of the Act also realized that should automatic cuts be required they should be as broad (and therefore as shallow) as possible. Protections were included for VA compensation and pension recipients, whose very sustenance may depend upon their monthly benefits, and for overall VA health-care expenditures. However, with some other exceptions (most notably, Social Security) the cuts would be "across the board."

Public support for this plan is in large measure attributable to the breadth of programs subject to sequestration. As long as any resulting dislocation is widely shared, this much-deserved support will remain strong. The current exemptions for VA benefits and services already place disabled veterans and their survivors in a deservedly preferred category. In view of the need to maintain broad support of the program designed to control deficit spending, the Administration opposes any further exemptions for veterans' programs.

Section 8(b)(2)(A) of the bill would make part of section 601(a) of Public Law 99-576 effective retroactively to include Fiscal Year 1986. Section 601(a), among other things, exempted the Veterans' Administration Special Therapeutic and Rehabilitation Activities Fund (Activities Fund), established by section 618(c) of title 38, United States Code, and the Veteran's Canteen Service (VCS) revolving fund, established by section 4204 of title 38, from any sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 (Deficit Control Act) or any other law. That provision of Public Law

99-576 was not effective until the 1987 Fiscal Year. Section 8(b)(2)(A) would cost the Government $100,000 to repay the monies sequestered from the Activities Fund in FY 1986 and $8.104 million to repay the monies sequestered from the Revolving Fund in FY 1986.

We cannot support the retroactive exemption proposed by S. 9. The belated return of the sequestered funds to these accounts is not justified because these accounts do not need the funds, it would increase the deficit, and it would set a bad precedent for other sequestered funds.

If S. 9 were to be enacted, the first 5-year cost estimates and pertinent statistical projections for the compensation and DIC rate increases provided in section 2 are as follows:

Fiscal Year	COLA	Cost ($000)
1988	4.2%	$ 353,900
1989	--	423,100
1990	--	421,800
1991	--	420,100
1992	--	418,200
		$2,037,100

If, on the other hand, the VA's draft bill (S. 940) were to be enacted, automatically providing annual increases in the rates for these benefits to correspond to the annual CPI increases, the compounded 5-year cost estimates and COLA projections are as follows:

Fiscal Year	COLA's	Cost ($000)
1988	4.2%	$ 353,900
1989	4.4%	804,400
1990	4.1%	1,249,400
1991	3.7%	1,660,800
1992	3.1%	2,017,400
		$6,085,900

If S. 9 were to be enacted, the first 5-year cost estimates and pertinent statistical projections for the remaining sections of the bill are as follows:

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Honorable Alan Cranston

Section 3, Increased Specially Adapted Housing Grant

Fiscal Year	Affected Grants	Cost ($000)
1988	425	$1,670
1989	400	1,577
1990	365	1,438
1991	330	1,299
1992	300	1,164
		$7,148

Section 4, Increased Maximum Burial and Funeral Allowances (Service-connected Deaths)

Fiscal Year	Burial Allowances	Cost ($000)
1988	8,700	$10,000
1989	8,700	10,000
1990	8,700	10,000
1991	8,700	10,000
1992	8,700	10,000
		$50,000

Section 5, Tolling of Education and Rehabilitation Delimiting Dates (Incapacity Due to Drug and Alcohol Use)

There would be little or no cost for this proposal.

Section 6, Increase in Maximum Home Loan Guaranty

Fiscal Year	Claims Affected	Cost ($000)
1988	59	$ 374
1989	678	4,305
1990	1,216	7,722
1991	2,283	14,497
1992	2,668	16,940
		$43,838

Section 7, Increase in Maximum Automobile Grant

Fiscal Year	Affected Grants	Cost ($000)
1988	750	$ 398
1989	700	371
1990	600	318
1991	500	265
1992	400	212
		$1,564

Section 8, Exemption of Programs from Sequestration

We are unable to estimate the cost of this proposal. (There is no sequestration order currently in effect.) However, as to section 8(b)(2)(A), the cost would be the one-time return of the $100,000 to the Activities Fund and $8.104 million to the VCS Revolving Fund.

In view of the foregoing, while we support certain features of the bill, we are unable to support S. 9 in its present form.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 9 to the Congress.

Sincerely,

THOMAS K. TURNAGE
Administrator

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

**Veterans
Administration**

MAR 24 1987

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Veterans' Administration (VA) on S. 6, a bill "To amend title 38, United States Code, to improve various aspects of Veterans' Administration health-care programs, to provide certain new categories of persons with eligibility for readjustment counseling from the Veterans' Administration and to postpone the transition period for the Vet Center program, to authorize the establishment of a pilot program for the furnishing of noninstitutional care to certain veterans, and to increase the per diem rates paid to States for providing care to veterans in State homes; and to prohibit the excessing of certain Veterans' Administration properties; and to promote greater emphasis by affiliated health-professional training institutions on geriatric training and research; and for other purposes."

Major provisions of S. 6 would authorize VA to provide services to overcome infertility, clarify domiciliary care eligibility, expand eligibility for readjustment counseling, direct VA to conduct a pilot program to furnish veterans with primarily nonmedical support services as an alternative to institutional care, increase State home per diem rates, alter staffing requirements in the office of the Chief Medical Director, and permanently prohibit the excessing of certain VA property in the Los Angeles area.

VA supports enactment of several provisions of the bill, as discussed more fully below; however, we do not support the bill in its entirety.

Section 2 of the bill would authorize VA to furnish services to achieve pregnancy in a veteran, or a veteran's spouse, if necessary to overcome a service-connected disability which impairs the veteran's procreative ability. Thus, if a woman veteran is unable to become pregnant due to damaged fallopian tubes resulting from a service-connected disability, the VA could furnish, or pay for artificial insemination or in-vitro fertilization services for the woman. Similarly, VA could furnish such services to a woman whose spouse is unable to impregnate her due to a service-connected disability.

There are certainly compelling cases of veterans with service-connected disabilities which impair their ability to procreate. Advances in medical technology and technique have begun to make it possible for medical science to help some affected couples. Nevertheless, philosophical and practical questions continue to exist regarding the appropriateness of VA authorizing "services" to assist in a veteran or a veteran's spouse in becoming pregnant. Furthermore, the Office of Technology Assessment (OTA) is continuing a detailed study of this entire subject, a project begun last summer. We oppose enactment of a provision such as section 2 until the OTA study is completed and more of the vexing questions regarding this subject have been answered.

We estimate that the costs of section 2 would be $.58 million in the first fiscal year and $4.1 million over five fiscal years.

Section 3 of the bill would amend title 38 to change and clarify the eligibility criteria for domiciliary care. It would provide that to be eligible for domiciliary care, a veteran must need such care and be either (1) service-connected, or (2) be incapacitated from earning a living and have no adequate means of support.

Under existing domiciliary care eligibility provisions the law appears to impose more stringent requirements on the service-connected veteran than on other veterans. Thus, to be eligible for domiciliary care, the service-connected veteran must have a permanent disability, tuberculosis, or a neuropsychiatric ailment; be incapacitated from earning a living; and have no adequate means of support. In contrast, statutory provisions governing domiciliary eligibility for other veterans impose none of these requirements, and condition eligibility on an "inability to defray" and a need for such care. Section 3 would rectify this inequity, making domiciliary care eligibility requirements the same for all veterans. In favoring enactment of this proposal, VA does not intend to place the nonservice-connected veteran on an entirely equal footing with the service-connected veteran. If the proposal were enacted, VA would propose implementing regulations that would give the service-connected veteran priority over the nonservice-connected veteran.

We estimate that enactment of section 3 would not impose additional costs.

Section 4 of the bill contains two distinct provisions. Subsection (a) would authorize the VA to provide readjustment counseling to (1) persons still on active duty with the Armed Services who served during the Vietnam era, and (2) to those who served in the Armed Services after the Vietnam era in combat situations. We believe our readjustment counseling program has been an effective one, and one which could benefit active duty personnel who served in Vietnam as well as in combat areas such as Grenada and Lebanon. VA already has authority to provide these services to active duty personnel under Public Law 97-174. However, we would support an amendment to section 612A to extend eligibility for such services to those veterans who served on active duty during a period after May 7, 1975, in an area in which hostilities occurred. We see no need, however, for extending such eligibility to active duty members.

We estimate that section 4(a) would impose insignificant costs.

Subsection (b) of section 4 would amend section 612A(g) of title 38, United States Code, effectively postponing for one year the date by which the VA's Readjustment Counseling Program would have to be changed from a program taking place primarily in Vet Centers, to a program taking place primarily in VA medical centers. Under existing law, the Administrator, by April 1, 1987, must evaluate and report on the effectiveness of the Readjustment Counseling Program in meeting the readjustment needs of Vietnam veterans. The report must also include the Administrator's views on the extent to which readjustment needs of such veterans remain unmet, and the extent to which Vet Centers are required to meet this remaining need. In evaluating the program, the Administrator must take into consideration such information as is available from a VA study, mandated by Public Law 98-160, of the prevalence and incidence among Vietnam veterans of post-traumatic stress disorder and other postwar psychological problems in readjusting from service. Section 4(b) anticipates a delay in completion of the PTSD study, and would postpone the Readjustment Counseling Program transition if the findings from the PTSD study are not available in a timely fashion. The one-year delay in the transition would be effective only if the report on the post-traumatic stress disorder study is not submitted in sufficient time for the Administrator to consider it in responding to the requirements of the report due April 1, 1987.

Section 4(b) would also amend section 612A(g) of title 38, to postpone for one year the dates by which the Administrator must submit various reports to the Veterans' Affairs committees of Congress regarding the transition. It would postpone the April 1, 1987, due date of the report on the effectiveness of the Readjustment Counseling Program. It would also postpone the due dates of a report due July 1, 1987, describing VA's plan for the transition of the Readjustment Counseling Program to one providing services primarily through VA medical centers, and a report due February 1, 1989, on VA's experience during the first year of the transition. Section 102(b) of Public Law 98-160 would also be amended to postpone for one year the date by which VA must report on the PTSD study. Finally, section 4(b) would add one additional requirement to the evaluation of the readjustment counseling program which the Administrator is currently required to report on by April 1 of this year. The evaluation would have to include the Administrator's analysis and findings as to whether or not veterans of World War II and the Korean conflict could benefit from readjustment counseling, and how such services could best be provided.

There can be no question that VA has experienced delays in completing the PTSD study. Those delays are regrettable, but, there were many unforeseen problems in conducting the study. The study is now progressing satisfactorily, and VA expects a report, including some results of the study, toward the end of this fiscal year. Nevertheless, we will not have study data which could be applied to the report due April 1 of this year. We would also note that several factors now make it possible to relocate some vet centers to medical facilities. These factors include (1) the maturation and success of the vet center program; (2) the considerable changes which have occurred since 1980 in the relationship between Vietnam Era veterans and the VA system; and (3) the greater understanding on the part of VAMC staff of the needs of many Vietnam Era veterans and of the nature of the vet center program. Therefore, we are planning to relocate a small number of sites during this fiscal year. Although these changes in the Readjustment Counseling Program will take place, and although we anticipate meeting the April 1st due date for evaluating and reporting on the program, we have no objection to enactment of legislation which would postpone the statutory dates which mandate transition of the program to one taking place primarily in VA medical centers. Similarly, we would not object to the one-year postponement of the PTSD study report due date, and also the date when other reports on the transition would have to be completed.

We estimate that enactment of section 4(b) would not impose additional costs.

Section 5 of the bill would require VA to conduct a 4-year pilot program at not less than five nor more than ten geographic sites, through which participating veterans would receive appropriate health and health-related services. VA would be required to furnish appropriate "health-related" services solely by contract with appropriate public and private agencies, as well as to provide "case management" services (as defined) to each participant. The measure sets additional requirements as to the program's design, and requires VA to evaluate the effectiveness of providing alternative modes of care, as well as to assess the impact of that effort.

VA favors the basic concept of developing alternatives to institutional care. Accordingly, we have operated programs such as adult day health care and hospital based home care as alternatives to institutional care. We are also implementing the authority, granted by Public Law 99-576, to furnish respite care to veterans, and we have begun planning to implement new authority to furnish "home health services" to a wider array of veterans, and to furnish services to chronically mentally ill veterans in noninstitutional settings. We do not favor the particular program proposed in section 5, however.

First, we object to the requirement that such a program include provision of "health related services." Since VA's authority to provide "medical services" is a broad one, this provision would appear to require the Agency to furnish services that cannot be furnished under existing law, such as personal care or homemaker services, for example. As we have stated in the past, the principal statutory mission of the Department of Medicine and Surgery is to provide a complete medical and hospital service to eligible veterans. That mandate contemplates that VA will provide veterans with all needed medical services, either in VA operated facilities, or in limited circumstances when necessary, in facilities for which the VA contracts. Furnishing homemaker and personal care services, for example, is a departure from that role, and duplicates, in large measure, the assistance for which the basic aid and attendance allowances are currently paid to many veterans. It would also duplicate the availability of such services which are often available from community resources. We do not recommend a departure from the longstanding public policy that the Department of Medicine and Surgery be responsible for medical services for veterans, while other needs be met through other benefit programs or resources in the community.

Although the proposed pilot program might provide VA with the means to evaluate the benefits of providing particular services, we also object to it on the basis that it is unduly prescriptive in directing the scope and operation of the pilot program. We see no need for Congress to mandate the design of such an effort, such as in setting in law specific numbers of geographic areas, the use of specific numbers of VA geriatric evaluation units, and the degree to which VA must contract for services. In many respects, the requirements of the measure are so specific that they deprive VA of the latitude needed to derive real benefits from any such pilot program.

We estimate the costs of section 5 to be $9.2 million in the first fiscal year and $36.9 million over four fiscal years.

Section 6 of the bill would amend section 621 of title 38, which directs the Administrator to promulgate rules and regulations which are necessary and appropriate for the efficient provision of VA health care. The statute refers only to hospital, nursing home, and domiciliary care, all inpatient care programs, but does not refer to medical services, which include outpatient care. We agree that it is appropriate to add references to "medical services," as this provision does, making the section applicable to care furnished on an outpatient basis. We see no reason, however, to delete the long-standing provision currently set forth in section 621(2), and we oppose that aspect of the provision.

We estimate that enactment of section 6 would not impose additional costs.

Section 7 of the bill would amend section 641 of title 38, United States Code, to increase the per diem rates VA would pay to States for the care of veterans in State homes. The amount payable for the domiciliary level of care would increase from $7.30 to $8.70, and a single rate of $20.35 would be payable for both hospital and nursing home care, up from $15.25 and $17.05 respectively.

The VA is required by section 641(c) of title 38, United States Code, to report to the Congress every three years regarding the adequacy of State home per diem rates. The first and most recent report was submitted to Congress last fall. It stated that there are factors suggesting that per diem rates are adequate and others suggesting that increasing rates may be appropriate. For example, it was stated that the current per diem rate does not appear to inhibit

State home construction activity on the part of states. On the other hand, maintenance of the VA's percentage share of the cost of operating State homes over the next few years may require a per diem rate increase. The report concluded that some increase in per diem rates over the next five years may be appropriate. While an increase may be needed in the future, VA does not believe such an increase is necessary for Fiscal Year 1988.

We estimate that the costs of section 7 would be $14.5 million in the first fiscal year and $77.3 million over five fiscal years.

Section 8 of the bill would amend section 4103 of title 38, United States Code, to add flexibility in staffing the office of the Chief Medical Director (CMD). The provision would increase to two the number of authorized Associate Deputy Chief Medical Directors (ADCMD), and permit one of those positions to be filled by a nonphysician qualified in one of six specified health care professions, or who is a Director, or qualified to be a Director of a VA health care facility. The provision would also permit Directors of VA health care facilities, or persons qualified for that position, to be appointed to as many as two of the eight authorized Assistant Chief Medical Director (ACMD) positions. Finally, it would require that all individuals appointed to positions in the Office of the Chief Medical Director be qualified in the administration of health services.

The VA supports legislation to give the Agency greater flexibility in staffing the office of the Chief Medical Director, but we suggest an alternative to section 8 of this bill. During the 2nd session of the 99th Congress, S. 2172, which is similar to section 8, was introduced at the request of the Administration, and we are resubmitting the proposal this year. We believe that provision, because it gives greater flexibility, would be a better refinement of section 4103 than that provided by this bill.

The Administration bill (S. 2172), like S. 6, would authorize a second ADCMD position, but it would broaden the categories of individuals who could serve in either of the two positions to include highly qualified nonphysicians with health care management and hospital management backgrounds and skills. The number of authorized ACMD's would be reduced from eight to seven, partly because of the addition of the second ADCMD position. The Administration bill would also have made discretionary much of the rigid structure now set forth in section 4103 by eliminating the requirement that specific Service Directors exist in the Office of Chief Medical Director. All of the changes in the bill would enhance the flexibility of the Chief Medical Director, the individual responsible for managing the Department of Medicine and Surgery, to organize the office in the way that person believes best meets the needs of the Agency mission.

VA also cannot support the provision in section 8 of S. 6, which would require that all persons appointed to positions in the Office of the Chief Medical Director be qualified in the administration of health services. Though it may be desirable to have persons in those positions with those qualifications, such qualifications are not clearly necessary for effectiveness in performing the job. In sum, although enactment of section 8 of the current S. 6 would improve the status quo, we strongly recommend that even greater flexibility be given to the Chief Medical Director, as last year's Administration proposal would have done.

Enactment of section 8 would not impose new costs.

Section 9 of the bill would permanently prohibit the Administrator from declaring as excess to the needs of the Veterans Administration, approximately 109 acres of real property at the VA Medical Center, West Los Angeles, and approximately 46 acres at the VA Medical Center, Sepulveda, California. VA strongly objects to this provision.

VA recognizes its commitment to our Nation's veterans, which includes a commitment to the provision of medical care and treatment. VA medical centers are the focal point for this important mission, and we are constantly striving to improve the quality of care being provided veterans. The VA's commitment extends both to current as well as future medical care needs. Section 9 of this bill would unduly restrict the Agency's ability to respond to these needs.

The continued availability of unused or underutilized property at VA medical centers which can be used to meet future VA requirements is essential. However, enactment of this proposal would be an unwarranted intrusion into the responsibilities of VA to manage the property of the Agency efficiently and effectively and in the best interest of

America's veterans. Effective land utilization is a vehicle which can assist the VA to provide for these needs both today and in the future.

The General Services Administration's original survey of the West Los Angeles property identified 165 acres of land as unused or underutilized. The 1987 budget proposed sale of 109 acres. The VA Administrator subsequently reviewed current and future medical center needs and further reduced the excessing target to 80 acres, less than half of the acreage originally identified in the GSA survey. At the same time, the Administrator reviewed the excessing target at the Sepulveda Medical Center and reduced planned property sales from 46 to 32 acres. Retaining land unnecessarily at West Los Angeles and Sepulveda would not be in the best interest of the Agency or veterans.

Enactment of section 9 would result in a loss of up to $200 million in government revenues, and is contrary to the Administration's efforts to reduce costs. Prohibiting the efficient use of VA property, which would raise substantial revenues while not, as indicated by the VA Administrator, affecting current or future delivery of services, is contrary to Congress' stated priority of deficit reduction.

As noted above, section 9 is an undue intrusion into the authority of the VA Administrator to determine, under the Federal Property and Administrative Services Act of 1949, if the property is needed for Agency missions or is excess to its needs and should be disposed of.

Section 10 of the bill would require that VA report to the Congress on VA activities to promote increased efforts by medical and health-professional training schools affiliated with the VA to train individuals in the care of older patients, and to carry out research on aging, and diseases and disabilities associated with aging. The report would have to include very detailed information for academic years from 1980 through the present, for all institutions affiliated with the VA. Information would include the type of training programs provided, whether they involve on the job training in VA facilities or classroom training, costs of programs, estimates of VA patients receiving care from persons being trained in such programs, and descriptions of VA's role in encouraging such programs.

It is VA's view that information of the type which this report would require could be valuable. Some of the data could be gathered without great difficulty, particularly more general information which would suffice to demonstrate where programs exist and where additional activity needs to be encouraged. We would be willing to conduct a survey to obtain valuable data. We do not believe such a study needs to be mandated by law, however, and we do not believe it would be cost-effective to undertake an effort of the scope contemplated by this provision, which requires that a great deal of very detailed information be gathered. Accordingly, we cannot support section 10.

We estimate the cost of conducting the study and making the report required by section 10 would be $200,000.

The Office of Management and Budget has advised that there is no objection to the presentation of this report on S. 6 from the standpoint of the Administration's program.

Sincerely,

THOMAS K. TURNAGE
Administrator

Office of the
Administrator
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Washington DC 20420

Veterans
Administration

MAR 31 1987

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Veterans Administration on S. 105, 100th Congress, a bill "To amend title 38, United States Code, to provide for the payment of incentive special pay to Veterans' Administration psychologists who obtain certain board certification in a professional specialty."

Current law authorizes incentive special pay for VA physicians, but not dentists, who have attained board certification in a medical specialty. This bill would authorize payment of incentive special pay to psychologists who are awarded board certification in clinical or counseling psychology by the American Board of Professional Psychology, or who have obtained an additional advanced academic degree which the Administrator determines would be in the best interest of the VA. The purpose of special pay, since it was initially established under Public Law 94-123 in 1975, has been to enhance the VA's recruitment and retention of physicians. There is no persuasive evidence that the VA is now experiencing problems recruiting and retaining psychologists so as to warrant providing incentive special pay to them. Accordingly, the VA opposes the bill.

The bill would essentially provide VA psychologists a pay bonus if they obtain board certification and agree to work for the VA for at least one year. We do not believe such a bonus is necessary to attract and maintain the number of highly-qualified psychologists needed for the VA health care mission. The Administrator already has authority, under 38 U.S.C. § 4107(g), to increase rates of basic pay in order to alleviate local recruitment or retention problems, should they arise.

The VA's Department of Medicine and Surgery employs a wide variety of health care personnel who, like psychologists, may achieve a range of accreditations, certifications, and diplomas. In many of these professional fields, such as audiology and speech pathology, there is no additional compensation resulting from such attainments. In light of that fact, we believe it would be inequitable to give unique benefits to psychologists based solely on board certification.

The VA estimates the cost of the special pay authorized by this bill as $2.22 million in the first fiscal year, and $11.1 million over the next five fiscal years.

The Office of Management and Budget advises that there is no objections from the standpoint of the Administration's program to the submission of this report to the committee.

Sincerely,

THOMAS K. TURNAGE
Administrator

COST ESTIMATE

As of September 30, 1986,, there were 1024 full-time and 111 part-time clinical and counseling psychologists in the Department of Medicine and Surgery. Thus, the cost of this legislation is estimated to be $2.22 million per year, exclusive of any additional fringe benefits costs (retirement and life insurance). The estimate assumes clinical and counseling psychologists are appointed under 38 U.S.C. 4104(3), the maximum incentive is authorized, and 84% of clinical and counseling psychologists are or will become board certified. It also assumes average employment of part-time employees to be half-time.

Office of the
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Washington DC 20420

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MAR 24 1987

Honorable Alan Cranston
Chairman, Committee on
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United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Veterans' Administration (VA) on S. 216, a bill "To amend title 38, United States Code, to increase the per diem rates paid to States for providing care to veterans in State homes."

S. 216 would amend section 641 of title 38, United States Code, to increase the per diem rates VA would pay to States for the care of veterans in State homes. The amount payable for the domiciliary level of care would increase from $7.30 to $8.70, and a single rate of $20.35 would be payable for both hospital and nursing home care, up from $15.25 and $17.05 respectively.

The VA is required by section 641(c) of title 38, United States Code, to report to the Congress every three years regarding the adequacy of State home per diem rates. The first and most recent report was submitted to Congress last fall. It stated that there are factors suggesting that per diem rates are adequate and others suggesting that increasing rates may be appropriate. For example, it was stated that the current per diem rate does not appear to inhibit State home construction activity on the part of states. On the other hand, maintenance of the VA's percentage share of the cost of operating State homes over the next few years may require a per diem rate increase. The report concluded that some increase in per diem rates over the next five years may be appropriate. While an increase may be needed in the future, VA does not believe such an increase is necessary for Fiscal Year 1988.

Honorable George Bush

We estimate that the costs of enacting S. 216 would be $14.5 million in the first fiscal year and $77.3 million over five fiscal years.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

THOMAS K. TURNAGE
Administrator

Office of the
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Veterans
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JUN 11 1987

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510-6375

Dear Mr. Chairman:

I am pleased to respond to the March 13, 1987, request for the views of the Veterans Administration (VA) on the draft bill, S. 631, the "Veterans' Administration Procurement Improvement Act of 1987." Although the bill seeks to enhance and support the process by which the VA procures medical and pharmaceutical supplies, we believe the legislation is unnecessary since the VA is already implementing a program to standardize these procurements. Therefore, the VA does not support this legislation.

S. 631 would require the VA, within 3 years of its enactment, to develop and fully implement an Agency-wide plan for the standardization of all medical supplies and pharmaceuticals procured by the VA; require VA medical centers to purchase these items through national contracts; require medical centers to enter into contracts with local vendors in certain situations; and require medical centers to report annually to the Administrator of Veterans' Affairs on all medical and pharmaceutical items or supplies procured annually by the medical center under a local contract.

One goal of the VA is to ensure the effective and efficient delivery of medical services to its patients. The VA views standardization as a way to enhance that goal. At present, for the initial pilot test of the standardization program, the VA is reviewing 32 medical and pharmaceutical items for possible standardization. The VA is also preparing a circular to establish a policy of analyzing and identifying items for possible standardization and to ensure that this process is ongoing. With issuance of the circular, the standardization program will be "institutionalized" and be a continuous part of VA procurement decisions. We believe these efforts are indicative of the VA's commitment to improve the process by which it procures medical and pharmaceutical supplies, and that legislation of this nature is unnecessary. Not only is S. 631 unnecessary, but it would also unduly limit

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Honorable Alan Cranston

needed flexibility in procuring often critically needed items. More specifically, S. 631 would limit the procurement of medical and pharmaceutical supplies obtained during a fiscal year under local contracts to 20 percent, as contrasted to 80 percent procured under national contracts. We believe that the 20 percent limitation may be unrealistic, especially in view of new drugs and technologies which are not readily available in VA's depot system. This limitation does not appear to take into consideration bona fide medical emergencies or drugs which are required due to our affiliation with other hospitals. Second, the provision to require Medical Center Directors to submit a report involving line-item detail on local procurements would be a most difficult administrative burden until an automated procurement system could be implemented. Finally, we believe that some of the economies this bill is intended to achieve could be accomplished, however, by enacting an altogether different provision--one that would authorize VA to use multiyear contracts. S. 631 does not provide such authority, however. The enactment of such a provision would provide VA with significant cost savings in contract administration, in supplies and in equipment.

You have also requested an estimate of the additional costs associated with S. 631 in the current fiscal year and in each of the following five fiscal years. Since many of the costs are unpredictable, such as personnel requirements, personal travel, ADP costs, mailing and shipping costs, the VA is unable to project a reliable, complete estimate.

One of the most valuable tools necessary for standardization within the VA is the use of multiyear contracts in the VA's acquisition program. We believe that multiyear contracting will provide significant cost savings in the area of contract administration and lower costs to the VA for supplies and equipment. This bill should be amended to include provisions which would specifically authorize the use of multiyear contracts.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 631 to the Congress.

Sincerely,

THOMAS K. TURNAGE
Administrator

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Veterans
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JUN 9 1987

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Veterans' Administration (VA) on S. 713, a bill "To amend title 38, United States Code, to facilitate the recruitment of registered nurses by the Veterans' Administration."

S. 713 would authorize the Administrator of Veterans' Affairs to pay bonuses up to $20,000 to individual registered nurses who agree to be employed by, or continue employment with the VA's Department of Medicine and Surgery (DM&S) for a specified minimum period. Bonuses could be paid only to nurses who agree to work in designated geographical locations, or in a designated specialty in which VA has a significant recruitment or retention problem. For the reasons stated below, the VA does not support enactment of this bill.

Under S. 713, bonuses could be paid only to registered nurses employed by the VA under title 38, United States Code. A written service agreement between the VA and the nurse would specify the geographic location and/or professional specialty in which the nurse would work. The Administrator would be required annually to determine specific geographic locations and professional specialties with recruitment and retention problems warranting use of the bonus program. No bonus could be paid to a nurse performing obligated service to the VA under the Agency's Health Professional Scholarship Program. Bonuses could be paid to newly-hired nurses or those already employed by the VA, and could be in any amount not exceeding $20,000. Bonuses could be paid in a lump sum, or in installments, and would be in addition to all other pay and allowances. A bonus would not be considered basic pay for determining amounts of other benefits nurses are entitled to, such as workers' compensation, retirement, insurance, or leave.

Under S. 713, the written agreement between the nurse and the VA would also specify the period of full-time VA employment required in exchange for a bonus. The minimum service period permitted under the bill is three years. Failure to complete the service obligation would require the nurse to repay the bonus, or a prorated part of it based on the time actually served compared with the service period agreed to. Upon completion of the agreed service, the nurse would be eligible to sign another agreement and obtain another bonus.

The VA's Department of Medicine and Surgery currently has a task force that is charged with studying recruitment and retention problems in the VA health care system, and with identifying long-term solutions to those problems. Bonuses are one tool being considered by the task force for meeting employment needs in various health care occupations, including registered nurses. The panel will consider both positive and negative aspects of a bonus program. For example, a bonus system would allow pinpoint targeting of dollars to specific recruitment and retention needs, and it could be approved and terminated in response to rapid changes in staffing needs. This "turn on, turn off" factor is complemented by the fact that bonuses would not affect employees' basic pay, nor create a permanent increase in payroll. Bonuses would also allow VA to better compete for nursing services with those private sector hospitals which now pay bonuses. On the other hand, a bonus system such as that proposed in this bill could be considered inequitable in that it provides bonuses only to registered nurses, not for other occupations for which VA also has very severe recruitment and retention problems. The task force might also conclude that funds would be better spent in other more effective recruitment and retention programs. We strongly urge that Congress allow the task force to complete its work before acting on S. 713.

We estimate that the costs of enactment of S. 713 would be insignificant in the first fiscal year, and would be approximately $204.5 million over five fiscal years.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 713 to the Congress.

Sincerely,

THOMAS K. TURNAGE
Administrator

COST ESTIMATE AND ASSUMPTIONS
S. 713

- Assumptions:
  - Bonuses to all staff nurses and head nurses in facilities now authorized special salary rates.
  - Turnover rate will remain fairly constant at 16.4%
  - Losses will be replaced at the same rate
  - Population of 20,324 - all eligible and will participate
  - Three year cycle of $2,500, $2,500 and $5,000 will repeat itself

Cost estimates for proposal are ($'s in 000'S):

First Year	0
Second Year	42,478
Third Year	42,478
Fourth Year	72,165
Fifth Year	47,345
TOTAL	204,466

- Methodology used:

Number of eligible nurses at the 92 facilities (20,324) with special salary rates times the designated amount of the bonus minus a 16.4% adjustment for turnover.

- Calculations for turnover

Year	Initial	1-2	2-3	3-4	4-5
EOY	1 20,324				
	2 16,991	3,333			
	3 14,204	2,786	3,334		
	4 11,875	2,329	2,786	3,334	
	5 9,926	1,947	2,329	2,786	3,336

O If existing special salary rates for all bonus recipients is reduced by 10 percent per year, the reduction of special salary rate costs would be 50 percent of current levels by the fifth year of the bonus program, or $38.25 million.

Office of the
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Washington DC 20420

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JUN 17 1987

Honorable Alan Cranston
Chairman, Committee on
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United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are pleased to respond to your request for the views of the Veterans Administration (VA) on S. 894, 100th Congress, a bill "To amend title 38, United States Code, to authorize the Administrator of Veterans' Affairs to furnish certain hospital care and medical services for service-connected disabilities of certain veterans." The Veterans Administration strongly supports this proposal and formally submitted legislation on March 31, 1987, which would achieve the purposes of S. 894.

The major purpose of this bill is to eliminate inequities in the law which bar certain veterans from receiving VA health-care benefits abroad for their service-connected disabilities. Existing law limits VA's authority to provide health care to service-connected veterans living or traveling abroad to those persons who are United States citizens or who reside in the Philippines. Because they have disabilities incurred in a war in which their country did not participate, some of these veterans can only obtain medical care at their own expense or by traveling to the United States to seek care in a VA facility. Service-connected veterans who are U.S. citizens and who reside overseas do not face these obstacles. In effect, the citizenship requirement bars provision of care to a dedicated group of foreign nationals who were disabled while serving as members of U.S. Armed Forces.

S. 894 would amend section 624(b) of title 38, United States Code, to remove the citizenship requirement from the law, allowing equal treatment of all disabled U.S. veterans. The change would primarily benefit a group of approximately 1,200 Canadian citizens who were disabled while serving with U.S. forces in Vietnam. Other similarly disabled foreign nationals would, of course, also be eligible.

The draft legislation that VA submitted to Congress to accomplish the purposes of S. 894 also requested that section 624(b) of title 38 be further amended to clarify VA's authority to provide medical services to veterans participating in a vocational rehabilitation program outside the United States.

Under section 1514 of title 38, VA is authorized to provide vocational rehabilitation programs overseas similar to those provided to eligible veterans in the United States. In the United States, a participant in such a rehabilitation program is also eligible to receive any hospital care or medical services needed for continued participation in the program. That is not the case with respect to veterans residing or traveling abroad. Section 624 of title 38 provides that VA may furnish hospital care and medical services overseas only for service-connected disabilities. This limitation works to prevent VA from furnishing veterans in vocational rehabilitation programs outside the United States with all medical care and services needed for continuation in the rehabilitation program. The VA draft bill would eliminate this disparity between service-connected veterans living in the United States and those living overseas.

While VA favors S. 894, we recommend that the bill be amended to clarify VA's authority to provide medical services to veterans participating in a vocational rehabilitation program outside the United States. We do not believe that the enactment of S. 894, even with the addition of our suggested amendment, would result in any significant new costs.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 894 to the Congress.

Sincerely,

THOMAS K. TURNAGE
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JUN 29 1987

Honorable Alan Cranston
Chairman, Committee on
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United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to provide the views of the Veterans Administration (VA) on S. 1002, 100th Congress, a bill "[t]o amend title 38, United States Code, to provide disability and death benefits to veterans (and survivors of such veterans) exposed to ionizing radiation during the detonation of a nuclear device in connection with the United States nuclear weapons testing program or the American occupation of Hiroshima or Nagasaki, Japan; and for other purposes." We strongly oppose enactment of this bill.

The bill would create a new chapter 14 in title 38, United States Code, to provide disability and death benefits at specified levels based on the exposure of a veteran to ionizing radiation during participation in nuclear testing or the American occupation of Hiroshima or Nagasaki prior to July 1, 1946. It would grant benefits at the rates specified in chapters 11 and 13 of title 38 in the case of radiation-exposed veterans who contract cancer of the thyroid or leukemia within particular periods after exposure. It would provide benefits payable at 50% of the rates listed in chapters 11 and 13 of title 38 for certain other diseases (manifested 5 or more years after exposure) described as moderately associated with radiation and not shown to be associated with other significant risk factors, where a veteran's radiation-exposure level, as computed under the bill, exceeds 1 rem.

The measure would also require the VA to accord "special consideration" to claims for disability or dependency and indemnity compensation (DIC) based upon participation in specified atomic activities where the veteran suffers any of several enumerated diseases described as somewhat associated with radiation or equally or more strongly associated with other risk factors. In addition, S. 1002 would require the VA, in adjudicating radiation claims, to systematically add up to 5 rems to dose estimates provided by the Defense Nuclear Agency (DNA), depending upon the circumstances of the veterans' radiation-related service. The provisions governing entitlement to disability and death benefits would apply only to claims filed on or before September 30, 1990. Finally, the bill would extend until September 30, 1990, health-care eligibility for atomic veterans as provided under existing law.

The VA is committed to assuring that the health-related concerns of atomic veterans are responsibly addressed. We have fully implemented the provisions of law that authorize free, comprehensive health care for atomic veterans regardless of whether their ailments are radiation related. We have also worked diligently to devise and apply regulations to ensure the careful, reasoned consideration of their compensation claims on the basis of the best available evidence. The enactment of S. 1002 would mark a radical departure from this reasoned approach that is not justified by scientific evidence and as a result would seriously undermine the legitimacy of our compensation programs.

Our primary objections to the bill may be summarized as follows: Existing law already contains adequate authority to grant benefits for the radiogenic diseases in question; establishment of entitlement on a presumptive basis in the case of low-level radiation exposure would undermine the traditional principles of VA benefit programs; the eligibility criteria in the bill are overinclusive and inequitable; and the proposed alteration of DNA dose estimates would be arbitrary and unnecessary.

S. 1002 incorporates a number of congressional findings that posit a need for the legislation. These findings will be addressed implicitly in our discussion of VA's objections to the bill.

The VA currently has broad authority to grant service connection for disabilities, including those caused by exposure to ionizing radiation during military service, even where the initial symptoms of disease manifest themselves years after exposure. Some 28 such claims have been allowed to date. Moreover, when scientific research produces new findings on the cause of a particular disease or its association with the circumstances of service, existing law enables the VA to revise its regulations to reflect the latest scientific data. This ensures an orderly system of claims adjudication that is firmly based on accepted medical and scientific knowledge.

VA's regulation governing adjudication of compensation claims based on radiation exposure, at 38 C.F.R. § 3.311b, provides for case-by-case reviews in recognition of the many variables that must be considered in assessing the merits of such claims. Thus, once it is verified that a radiogenic disease has developed within specified periods after exposure to radiation in service, analysis continues, taking into account a number of factors. These include:

> (1) The probable dose, in terms of dose type, rate and duration, as a factor in inducing the disease, accounting for any known limitations in the dosimetry devices employed in its measurement or the methodologies employed in its estimation;
>
> (2) The relative sensitivity of the involved tissue to induction, by ionizing radiation, of the specific pathology;
>
> (3) The veteran's gender and pertinent family history;
>
> (4) The veteran's age at the time of exposure;
>
> (5) The time-lapse between exposure and onset of the disease; and
>
> (6) The extent to which exposure to radiation or other carcinogens outside of service may have contributed to development of the disease.

Because each of these factors can substantially affect the likelihood that a claim is valid, there is no pat formula or blanket rule that can be devised which would equitably provide benefits and be neither overinclusive nor underinclusive. There is no acceptable "quick fix," no substitute for thoughtful analysis of the facts unique to each case in endeavoring to separate the more deserving claims from the rest.

All authoritative scientific information leads to the conclusion that the overwhelming majority of veterans covered by S. 1002 received very low doses of radiation, whether they participated in the weapons tests or the occupation of Hiroshima and Nagasaki. For example, official film-badge data for the test participants show fully 42% received no dose whatsoever, and the average for the entire group was only .5 rem. Less than 1% received doses exceeding 5 rems, which under current Federal guidelines is the annual allowable exposure for radiation workers.

To put these doses into perspective it should be borne in mind that the average American sustains an annual dose-equivalent of approximately 0.1 rem from natural background and medical and dental treatment.

The doses for the occupation forces were even more negligible, given such historical factors as the limited activities of the personnel, the distance between the hypocenters of the detonations and where the servicemembers were stationed, the relatively short duty assignments in the cities, and the assignment of troops to the cities only after weeks had elapsed since the bombings. An absolute worst-case analysis by the DNA shows no veteran's dose could have exceeded 1 rem as a result of his participation in the occupation of Hiroshima or Nagasaki.

What is the health effect, if any, of such small doses? While the effects at high doses are well documented, the effects, if any, of the low doses sustained by most of these veterans are so few as to be undetectable. Prudence may dictate that one not assume there is no adverse health consequence whatsoever at doses as low as 1 rem or less, but the best estimates are that the risk, if any, is infinitesimally small. For example, the lifetime risk of death from cancer in the general population is 16% or 17%, so that we might expect 32,000 to 34,000 deaths from cancer will eventually occur in any population of 200,000 (roughly the number of veterans who participated in the weapons tests). A radiation exposure of .5 rem for this population would only, it is widely accepted, increase the number of cancer deaths at most ten cases (above the 32,000 to 34,000 "naturally occurring" ones). The issue really becomes whether the Federal government should presume entitlement to benefits based on all 32,010 eventual cancers among atomic veterans in order to assure that the ten possible excess cases due to exposure from atomic activities are covered, or whether it is better public policy to look at each case individually to separate the more deserving claims from those less deserving. We believe the only responsible approach is the latter.

The principle that the Government owes more to veterans disabled as a result of service than to other veterans has guided benefit policies since our Nation's infancy. No one can question the responsibility to compensate for loss of life or health in the line of duty, which is why the VA's current compensation programs deserve and enjoy broad public support. If eligibility criteria are diluted or new programs created such that significant numbers of beneficiaries whose disabilities are not traceable to service can qualify for benefits, public support will almost certainly erode, and there may be a harmful backlash. That is why it is essential that eligibility standards remain tenable and that the underlying principle of service connection not be compromised by provision of what is essentially service-connected disability compensation and DIC under a different name.

We are also concerned that the population of veterans at which S. 1002 is directed may not be defensible on substantive due-process grounds. The bill focuses on test participants and occupation troops only, to the exclusion of all other veterans exposed to radiation. Literally every servicemember was exposed to natural background radiation. Virtually all veterans of the modern era received standard chest X-rays during entrance and separation examinations, for example. If the policy proposed in S. 1002 is adopted with respect to only "atomic" veterans, on what basis can other veterans equally exposed be denied equal treatment?

Under section 3 of S. 1002, atomic veterans who contract cancer of the colon, small intestine, stomach, liver (except where cirrhosis or hepatitis B is indicated), bile ducts, gallbladder, or pancreas, lymphomas (excluding Hodgkin's disease) or multiple myeloma would have to meet a 1 rem dose-threshold to establish eligibility for benefits. Such veterans who establish eligibility would only be entitled to 50% of the rate of benefits payable to other radiation-disabled veterans. Neither the dose-threshold nor the 50% benefit rate is applicable to other classes of atomic veterans under the bill. We know of no scientific or medical basis for associating these diseases with a 1-rem dose threshold. Further, the 50% benefit rate bears no rational relationship to the underlying objectives of the disability and death-benefit rate structure.

We object as well to section 4 of the measure, which would require the VA, in adjudicating claims, to mechanically add from 1 rem to 5 rems to dose estimates prepared by DNA, under specified circumstances. The provision arbitrarily denigrates the invaluable research performed by DNA in tabulating and reconstructing dose data, and seemingly ignores the qualified endorsement of DNA's methodology given by the National Research Council (NRC) of the National Academy of Sciences in a 1985 report.

We are aware of the General Accounting Office (GAO) report cited in the preface to the bill, which is somewhat critical of DNA dose-estimates from one atomic test series, "Operation Crossroads." However, the Department of Defense (DoD) has countered GAO's report by determining that "Crossroads" film badge readings may have had an uncertainty range of ± 30%, in most instances causing overestimations of the true doses. DoD concluded that, in any event, the effect of the uncertainties was not significant because the doses involved were so low. DoD also found that GAO's conclusions regarding decontamination and internal doses greatly overstated the actual impact of such exposure. According to DoD, even if all of GAO's critique were valid, the resulting adjustment of dose estimates would not be suggestive of an apppreciably greater risk of adverse health effects to atomic veterans.

The NRC reviewed reports from a number of nuclear tests. It concluded that the predominant hazard to the majority of nuclear-test participants was from external gamma radiation and approved DNA's calculations of external gamma doses. With respect to external beta radiation, the NRC found that such doses would have been limited to the skin and greatly reduced or eliminated by the shielding effect of clothing. The NRC also found that DNA's estimates of internal doses tended to overestimate internal radiation exposure. It concluded that, with the exception of doses to the thyroid, doses to internal organs from inhalation or ingestion of radioactivity were far smaller than external doses.

The VA's regulations already provide that whenever a dose is reported to the VA as a range of possible exposure levels, the Agency will presume exposure at the highest level of the dose range reported. These regulations also provide that if a dose estimate for an individual from a credible source differs materially from the dose data supplied by the military service, the disagreement will be referred to an independent expert, selected by the National Institutes of Health, for reconciliation.

It was assumed that new veteran cases would receive the 100% rate for an average of 2.5 years after first contracting the disease in question and then would be reduced to the average award value of those cases currently on the rolls. Survivor-benefit payments were assumed to be identical to the average DIC award value (per September Coin 127) increased by the recent 1.5% cost-of-living adjustment.

The benefit cost was estimated by applying the annual incident and mortality rates for the diseases specified in the bill to the veteran population in question; i.e., 110,000 veterans who served with the occupation forces at Hiroshima or Nagasaki serving within 10 miles of either city on official duties for at least one day between September 1945 and June 1946 and approximately 203,000 veterans who participated in an atomic test or worked on the proving grounds at the time of a detonation or test series. By applying the incident and mortality rates, we were able to arrive at the projected number of veterans afflicted with a disease, as well as the number of deaths in those populations. From these numbers, we computed the number of veterans surviving (incidence minus deaths). The number of eligible survivors was calculated by using the current ratio of the number of veterans 30% or more disabled (thus establishing potential entitlement to survivor benefits) with dependents to the total number of veterans rated 30% or more disabled. This figure was then applied to our projection concerning atomic veterans.

If a veteran's death occurred prior to 1957, survivors could be entitled to death compensation; however, DIC would be the significantly greater benefit. Therefore, it was assumed that survivors would all elect DIC benefits.

Assumptions regarding radiogenic diseases, based on incidence and mortality rates for the general population, were as follows:

	Annual incidence rates per 100,000	Annual mortality rates per 100,000
Leukemia	11.6	8.9
Thyroid gland	2.9	0.4
Colon	39.2	21.3
Small intestine	1.0	0.4
Stomach	13.1	9.4
Liver	3.4	3.3
Bile ducts & gallbladder	1.0	0.7
Pancreas	12.0	11.4
Lymphomas	10.4	4.3
Multiple myeloma	4.6	3.3

9.

Honorable Alan Cranston

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 1002 to the Congress.

Sincerely,

THOMAS K. TURNAGE
Administrator

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D.C. 20301-1600

13 JUL 1987

Honorable Alan Cranston
Chairman, Committee on Veteran's
Affairs
United States Senate
Washington, D.C. 20510-6375

Dear Mr. Chairman:

This is in response to your letter of June 25, 1987 requesting comments on S. 1002. The Administration strongly opposes S. 1002. This position was presented in a bill report and in testimony to your committee by the Veterans Administration on June 30, 1987. The Department of Defense concurs in the position expressed by the Veterans Administration and would like to note the following matters germane to our operations.

As the Congressional findings (§2(a)) clearly demonstrate, the legislation is motivated by the 1985 General Accounting Office (GAO) report on Operation CROSSROADS and the Defense Nuclear Agency's dose reconstruction methodology. It should be noted that DoD disagreed with almost all of the GAO's findings and recommendations. The DoD's final reply to the GAO report is enclosed.

Recognizing the value of independent, objective views on this debate, both DoD and your committee sought advice from outside experts. The Senate Committee on Veteran's Affairs asked the Office of Technology Assessment (OTA) to review the GAO report. Congress' scientific advisors generally endorsed the DoD position. The OTA report is attached. The National Academy of Science (NAS), at DoD's request, convened a prestigious panel of experts in radiation biology, dosimetry, statistics, and other scientific fields to review the DNA methodology for dose determination. Their report indicated that DNA's procedures were reasonably sound and may actually have overestimated exposures. A copy of the NAS report is enclosed.

Since the GAO report has been contradicted by DoD, OTA, and NAS, it would be unwise to use it as a basis for legislation.

As a general rule, DoD interposes no objection to legislation that expands veteran's benefits, as long as the legislation is equitable to all. S. 1002 would, however, provide benefits to only a select group of veterans. Three points must be expressed by way of caution: Many veterans have been exposed to some form of radiation while in the service. Their average doses and the methods used to determine those are essentially the same without regard to how the veteran was exposed to radiation. S. 1002 provides benefits only to those veterans who participated in atmospheric weapons testing in the occupation of Hiroshima and Nagasaki.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of these views on S. 1002 to the Congress.

Sincerely,

H. Lawrence Garrett, III

STATEMENT OF R. J. VOGEL
CHIEF BENEFITS DIRECTOR
VETERANS ADMINISTRATION
BEFORE THE
SENATE COMMITTEE ON VETERANS' AFFAIRS
JUNE 30, 1987

Mr. Chairman and Members of the Committee:

It is my pleasure to present the views of the Veterans Administration on the various bills on the agenda. I will first address the measures that represent VA initiatives and then comment upon S. 9, S. 1365, S. 453, and S. 1002. My remarks will focus upon the more salient features of the items under discussion.

* * * * * * *

S. 1365 would expand veterans' benefit eligibility for former prisoners of war by adding peripheral neuropathy, irritable-bowel syndrome, and peptic ulcers to the statutory list of medical conditions for which service connection may be presumed if manifested to a compensable degree following service.

At the outset, we are mindful of the realities of the repatriation process and the initial tendency of many former POWs to put aside the traumatic experiences engendered by captivity. Their impelling desire to be reunited with their families and friends as soon as possible may have resulted in the neglect of medical evaluations and thereby hindered the development of evidence to substantiate disability claims in future years.

We must also keep in mind that statutory presumptions are not conclusive, but rebuttable by evidence of record estabilshing that the conditions claimed are unrelated to service. Thus, we believe that there is little likelihood that spurious claims for service connection would be successful.

While we have reservations concerning the disabilities proposed under this bill, I want to make clear that an expansion of the number of presumptive diseases would have only a minimal effect on adjudicative activity. The disabilities specified in S. 1365 ordinarily would become manifest and require treatment upon repatriation or shortly thereafter. Therefore, it is probable that claims involving these conditions would have been granted on a "direct" basis by the VA upon review of the available medical evidence. Further, VA's policy is to treat claims of former POW's in a liberal manner, giving special consideration to the hardships and privations they have endured. Of course, we also resolve all reasonable doubt in their favor.

Our principal reservation concerning this bill is that the medical conditions enumerated do not lend themselves to a presumption of service connection. Irritable bowel syndrome is a functional disorder of unknown etiology and pathogenesis. Similarly, we are unaware of any substantive medical justification for presuming service connection for former POW's in the case of peptic ulcer disease. Peripheral neuropathy is the type of disability that would likely be identified shortly after discharge from service, regardless of the vagaries of the repatriation process. For those reasons, we cannot support enactment of S. 1365.

The bills listed below were introduced by the Committee Chairman at the Administration's request made in letters dated as shown and printed in the *Congressional Record* as shown.

Bill number	Date of letter of transmittal	Congressional Record citation	
		Page	Date
S. 915	March 24	S4586	April 3.
S. 918	March 17	S4589	April 3.
S. 939	March 31	S4746	April 7.
S. 940	March 31	S4749	April 7.
S. 1065	April 2	S5261	April 21.
S. 1089	March 31	S5429	April 23.
S. 1090	March 31	S5431	April 23.
S. 1136	March 9	S5916	May 5.

On August 5, 1987, the Chairman requested the Administrator's views on S. 1195, but no response has yet been received.

Excerpts relating to S. 1365 from the testimony submitted by the VA at the Committee's June 30 hearing are set forth below in lieu of an agency report on that measure.

ADDITIONAL VIEWS OF SENATOR ALAN CRANSTON ON DRUG TESTING

In addition to the points made in the analysis and discussion of the Committee bill's prohibition (in section 333) of mandatory drug testing of VA health-care and other employees, I believe this issue raises the question of what kind of society we want, and what kind of example the Federal Government should be setting as an employer. I believe firmly that all reasonable steps should be taken to provide for a workplace free of the effects of substance abuse—including alcohol abuse. But I do not believe that random drug testing would contribute in any significant way to achieving that result. Certainly, other less-intrusive means (such as a rigorous program of testing for substance abuse in the case of the three permitted testing situations) should be tried before resorting to such invasions of the person as random compulsory urine testing.

Oliver Wendell Holmes' notion that Government can impose any condition on employment ("[a person] has no Constitutional right to be a policeman") has long since been rejected. There are limits to what the Federal Government can force its employees to do as conditions of continued employment. The line between job-related conduct and individual privacy in terms, for example, of lawful use of medications or of pregnancy or other physical conditions detectable through a urine test should be breached by the Government only when there is a very good reason to do so. It should be the Government's goal to extend the heavy hand of "Big Brother" only as far as absolutely necessary in our society.

The theory underlying the randomness of testing is deterrence—or, put another way fear of apprehension. That is the wrong basis for the relationship between any employer and its employees. Relationships of trust should be the norm, not relationships of distrust. Employees should not be presumed "guilty" until they can "prove" their innocence. Programs that encourage deception to survive and that breed a lack of respect between employer and employee are antithetical to producing a service or a product—whether it be health care or widgets. In the health care area especially, high employee morale is crucial to the effectiveness of the services being provided.

The Federal Government should be encouraging productive, positive employer-employee relations rather than taking steps to recreate Orwell's "1984" in 1987.

ALAN CRANSTON,
Chairman.

MINORITY VIEWS OF SENATORS FRANK H. MURKOWSKI, ALAN K. SIMPSON, AND STROM THURMOND ON SECTIONS 112, 312, 401, AND TITLE II OF S. 9, THE PROPOSED OMNIBUS VETERANS' BENEFITS AND SERVICES ACT OF 1987

S. 9, as reported by the Committee, contains important and desirable provisions relating to veterans' health care programs, disability compensation, readjustment and education benefits, insurance, and memorial affairs. Taken as a whole, the bill makes significant and commendable improvements in the benefits upon which America's verterans depend. For this reason, we were pleased to vote, in Committee, to report the bill to the Senate and now urge favorable consideration by the Senate.

However, there are several provisions which we believe to be unwise, or with which we have unaddressed reservations. We are opposed to:

Section 112, which would add the disease of systemic lupus erythematosis (SLE) to the list of diseases which can be presumed to have been incurred in, or aggravated by, military service if the disease develops to a disabling degree within one year of service; even if there is no record or evidence of the disease while the veteran was on active duty.

While we can understand the desire to respond to the natural distress of veterans who develop a debilitating disease subsequent to their service, we are also concerned with the integrity of the system which provides compensation to veterans for their service-connected disabilities. Veterans who have been injured or disabled in the performance of their duty depend upon the veteran's disability compensation system. These veterans also depend upon the continued support of the American people for the generous veterans' compensation programs which have evolved over the years.

We believe diseases should be presumptively considered to be service-connected when they arise following separation only if there is a sound scientific and medical basis to associate the disease with military service. We fear creation of such a presumption of service connection without a sound factual and medical basis will weaken the integrity of the compensation system and possibly subject the system to criticism and lead to a reduction in public support.

We believe SLE does not meet this test because there is no known evidence linking this disease, which occurs naturally in the American population, to military service. Nor is there any evidence that veterans disproportionately suffer from the disease. We wish to emphasize that our concerns are not based on budget considerations. Veterans who develop SLE while they are in the service will be service-connected under current law (as of June 1987, 559 veterans received service-connected compensation for SLE). We would expect the number who develop the disease to a disabling degree within one year of service, who did not display symptoms while on active duty, will be quite small.

Title II of the Committee bill would establish a method to evaluate the disability compensation claims for radiogenic diseases filed by veterans who may have been exposed to ionizing radiation as a result of their participation in the occupation of Nagasaki and Hiroshima, or the above-ground testing of nuclear devices. We are concerned that the precedures and standards which would be established by title II, a reported, are unnecessarily complex and are based upon categorizations of radiogenic disease that may be subject to scientific or medical dispute. These concerns notwithstanding, we strongly support legislation which will provide a means for resolving the longstanding controversy concerning compensation for veterans exposed to ionizing radiation.

We do not support section 312 of the Committee bill which would undermine the State Veterans' Home Program. This program is based upon the sharing of costs between the Federal Government and the State. Under this proposal, the Federal Government—through VA and Medicaid—will essentially pay for nearly all of the operational costs of the State Veterans' Home Program. Any proposal such as this which undermines this sharing arrangement—by increasing the Federal Government's portion of the cost—utlimately undermines the program itself. For this reason, representatives of State Veterans' Homes testified before the Committee last year and strongly opposed this provision. Accordingly, we cannot support the proposal reported by the Committee.

Section 401 of the Committee bill would permanently prohibit the Administrator from excessing certain lands at the VA Medical Centers in West Los Angeles and Sepulveda, California. We do not believe that it would be in the VA's best interest to prohibit such excessing and thus we strongly oppose this provision.

Hearings were held on this issue during the second session of the 99th Congress and the Committee twice rejected attempts to permanently prohibit this excessing. A compromise was reached as part of Public Law 99-576 which prohibited the VA from excessing the land before January 1, 1988.

The Congress has provided the Administrator of Veterans' Affairs with the authority to excess land after fulfilling a "report and wait" requirement. We believe this provision would set a dangerous precedent of restricting the Administration's ability to make decisions about property under the control of the various department and agencies of Government.

The land in West Los Angeles under consideration consists of a vacant ravine, a golf course, recreational areas, and other land used for parking and recreation by non-VA patients. The land in Sepulveda consists of a baseball field, a golf course, a vacant halfway house for an orange grove. The VA has no current or future plans for the use of the land. Most importantly, this land is not being used to benefit veterans. It is our belief that health-care dollars used to maintain this property could be better spent on providing direct patient care to veterans.

FRANK H. MURKOWSKI,
Ranking Minority Member.
ALAN K. SIMPSON.
STROM THURMOND.

CHANGES IN EXISTING LAW MADE BY S. 9 AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38—UNITED STATES CODE

* * * * * * *

PART I—GENERAL PROVISIONS

* * * * * * *

CHAPTER 1—GENERAL

* * * * * * *

§ 113. Treatment of certain programs under sequestration procedures

(a) The following programs shall be exempt from sequestration or reduction under part C of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) or any other sequestration law and shall not be included in any report specifying reductions in Federal spending:

(1) Benefits under chapter 21 of this title, relating to specially adapted housing and mortgage-protection life insurance for certain veterans with service-connected disabilities.

(2) Benefits under section 907 of this title, relating to burial benefits for veterans who die as the result of a service-connected disability.

(3) Benefits under chapter 39 of this title, relating to automobiles and adaptive equipment for certain disabled veterans and members of the Armed Forces.

(4) Assistance and services under chapter 31 of this title, relating to training and rehabilitation for certain veterans with service-connected ⟦disabilities (but only with respect to fiscal year 1987).⟧ *disabilities.*

(5) Benefits under chapter 35 of this title, relating to educational assistance for survivors and dependents of certain veterans with service-connected ⟦disabilities (but only with respect to fiscal year 1987).⟧ *disabilities.*

* * * * * * *

⟦(e) If a final order issued by the President pursuant to a law providing for the cancellation of loan guarantee commitments imposes a limitation on the total amount of loans that may be guaranteed under chapter 37 of this title in any fiscal year, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a monthly report (not later than the 10th day of each month during the remainder of such fiscal year following the issuance of such final order) providing the following information:

[(1) The total amount of the loans for which commitments of guarantees were made under such chapter during the preceding month.

[(2) The total amount of the loans for which commitments were made during the fiscal year through the end of such preceding month.

[(3) The Administrator's estimates as to the total amounts of the loans for which commitments would, in the absence of any limits on such commitments or guarantees, be made during (A) the month in which the report is required to be submitted, and (B) the succeeding months of the fiscal year.**]**

[(f)**]** *(e)* This section applies without regard to any other provision of law (whether enacted before, on, or after the date of the enactment of this section) unless such Act expressly provides that it is enacted as a limitation to this section.

[(g)**]** *(f)* For the purposes of this section:

(1) The term "sequestration" means a reduction in spending authority and loan guarantee commitments generally throughout the Government under the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) or any other law.

(2) The term "sequestration law" means a law enacted with respect to a sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) or any other law (under the procedures specified in that Act or otherwise).

(3) The term "sequestration order" means an order of the President issued under part C of such Act.

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CHAPTER 3—VETERANS' ADMINISTRATION; OFFICERS AND EMPLOYEES

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SUBCHAPTER II—ADMINISTRATOR OF VETERANS' AFFAIRS

210. Appointment and general authority of Administrator; Deputy Administrator.
211. Decisions by Administrator; opinions of Attorney General.
212. Delegation of authority and assignment of duties.
213. Contracts and personal services.
214. Reports to the Congress.
215. Publication of laws relating to veterans.
217. Studies of rehabilitation of disabled persons.
218. Security and law enforcement on property under the jurisdiction of the Veterans' Administration.
219. Evaluation and data collection.
220. Coordination and promotion of other programs affecting veterans and their dependents.
221. Advisory Committee on Former Prisoners of War.
222. Advisory Committee on Women Veterans.
223. Administrative award of tort claims.

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SUBCHAPTER II—ADMINISTRATOR OF VETERANS' AFFAIRS

* * * * * * *

§ 213. Contracts and personal services

(a) The Administrator may, for purposes of all laws administered by the Veterans' Administration, accept uncompensated services, and enter into contracts or agreements with private or public agencies or persons (including contracts for services of translators without regard to any other law), for such necessary services (including personal services) as the Administrator may deem practicable. The Administrator may also enter into contracts or agreements with private concerns or public agencies for the hiring of passenger motor vehicles or aircraft for official travel whenever, in the Administrator's judgment, such arrangements are in the interest of efficiency or economy.

(b)(1) The Administrator may enter into a multiyear contract if the Administrator determines that—

(A) appropriations are available and adequate for obligations that are necessary for—

(i) total payments that would be required during the full term of the contract; or

(ii) total payments that would be required during the fiscal year in which the contract is entered into, plus the estimated amount of any cancellation charges payable under the contract; and

(B) the contract is in the best interest of the United States by reason of the effect that use of a multiyear, rather than one-year, contract would have in—

(i) reducing costs;

(ii) achieving economies in contract administration or in any other Veterans' Administration activities;

(iii) increasing quality of performance by or service from the contractors; or

(iv) encouraging effective competition;

(C) during the proposed contract period—

(i) there will be a continuing or recurring need for the supplies or services being procured;

(ii) there is not a substantial likelihood of substantial changes in the need for such supplies or services in terms of the total quantity of such supplies or services or of the rate of delivery of such supplies or services; and

(iii) the specifications for the supplies or services are expected to be reasonably stable;

(D) the risks relating to the prospective contractor's ability to perform in accordance with the specifications and other terms of the contract are not excessive;

(E) the use of a multiyear contract will not inhibit small business concerns in competing for the contract; and

(F) in the case of the procurement of a pharmaceutical item for which a patent has expired less than 4 years before the date on which the solicitation of offers is issued, there is no substantial likelihood that increased competition among potential contractors would occur during the term of the contract as the

result of the availability of generic equivalents increasing during the term of contract.

(2)(A) A multiyear contract authorized by this subsection shall contain—

(i) a provision that the United States' obligation under the contract during any fiscal year which is included in the contract period and is subsequent to the fiscal year in which the contract is entered into is contingent on the availability of sufficient appropriations (as determined by the Administrator pursuant to subparagraph (B)(i) of this paragraph) if, at the time the contract is entered into, appropriations are not available to cover the total estimated payments that will be required during the full term of the contract; and

(ii) notwithstanding section 1502(a) of title 31, a provision for the payment of reasonable cancellation charges to compensate the contractor for nonrecurring, unrecovered costs, if any, if the performance is cancelled pursuant to the provision required by clause (i) of this subparagraph.

(B)(i) If, during a fiscal year subsequent to the fiscal year in which a multiyear contract is entered into, the Administrator determines that, in light of other funding needs involved in the operation of Veterans' Administration health-care programs, the amount of funds appropriated for such subsequent fiscal year is not sufficient for such contract, the Administrator shall promptly cancel such contract pursuant to the provisions required by subparagraph (A)(i) of this paragraph.

(ii) Cancellation charges under a multiyear contract shall be paid from the appropriated funds which were originally available for performance of the contract or the payment of cancellation costs unless such funds are not available in an amount sufficient to pay the entire amount of the cancellation charges payable under the contract. In a case in which such funds are not available in such amount, funds appropriated for a subsequent fiscal year or years for the procurement of supplies and services for use for the same purposes as the supplies or services procured through such contract shall be used to the extent necessary to pay such cost.

(3) Nothing in this subsection shall be construed so as to supersede any other provision of law which authorizes multiyear contracts or to eliminate or restrict the Administrator's exercise of the right to terminate for convenience such a multiyear contract.

(4) The Administrator shall prescribe regulations implementing this subsection.

(5) For the purposes of this subsection:

(A) The term "appropriations" has the meaning provided such term in section 1511 of title 31.

(B) The term "cancel" or "cancellation" refers to the termination of a contract by the Administrator as required under paragraph (2)(B)(i) of this subsection.

(C) The term "multiyear contract" means a contract which (i) is for the procurement of supplies or services for use in a Veterans' Administration health-care facility, and (ii) by its terms is to remain in effect for a period which extends beyond the end of the fiscal year in which such contract is entered into but not beyond the end of the fourth fiscal year following such fiscal

year. Such term does not include a contract for construction or for a lease of real property.

(D) The term "nonrecurring, unrecovered costs" means those costs reasonably incurred by the contractor in performing a multiyear contract which (as determined under regulations prescribed under paragraph (5) of this subsection) are generally incurred on a one-time basis and include, but are not limited to, such costs as plant or equipment relocation, plant rearrangement, special tooling, special test equipment, preproduction engineering, and specialized work force training.

* * * * * * *

§ 223. Administrative award of tort claims

Notwithstanding the limitation contained in the proviso in the first paragraph of section 2672 of title 28, the maximum amount of an award, compromise, or settlement that the Attorney General may authorize the Administrator to make under such section in the case of any claim for money damages under section 1346(b) of title 28 or chapter 171 of such title shall be equal to the maximum amount of an award, compromise, or settlement which the Attorney General authorizes a United States attorney to make in the case of any such claim.

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PART II—GENERAL BENEFITS

CHAPTER Sec.
11. Compensation for Service-Connected Disability or Death 301
13. Dependency and Indemnity Compensation for Service-Connected Deaths 401
14. Disability and Death Benefits for Certain Veterans Exposed to Ionizing Radiation and Their Survivors.. 451
15. Pension for Non-Service-Connected Disability or Death or for Service 501
17. Hospital, Nursing Home, Domiciliary, and Medical Care 601
19. Insurance 701
21. Specially Adapted Housing for Disabled Veterans 801
23. Burial Benefits 901
24. National Cemeteries and Memorials 1000

CHAPTER 11—COMPENSATION FOR SERVICE-CONNECTED DISABILITY OR DEATH

* * * * * * *

SUBCHAPTER I—GENERAL

§ 301. Definitions

For the purposes of this chapter—

(1) * * *

* * * * * * *

(3) The term "chronic disease" includes—

Anemia, primary
Arteriosclerosis
Arthritis
Atrophy, progressive muscular
Brain hemorrhage
Brain thrombosis
Bronchiectasis
Calculi of the kidney, bladder, or gallbladder
Cardiovascular-renal disease, including hypertension
Cirrhosis of the liver
Coccidioidomycosis
Diabetes mellitus
Encephalitis lethargica residuals
Endocarditis
Endocrinopathies
Epilepsies
Hansen's disease
Hodgkin's disease
Leukemia
Lupus erythematosus, systemic
Myasthenia gravis
Myelitis
Myocarditis
Nephritis
Organic diseases of the nervous system
Osteitis deformans (Paget's disease)
Osteomalacia
Palsy, bulbar
Paralysis agitans
Psychoses
Purpura idiopathic, hemorrhagic
Raynaud's disease
Sarcoidosis
Scleroderma
Sclerosis, amyotrophic lateral
Sclerosis, multiple
Syringomyelia
Thromboangiitis obliterans (Buerger's disease)
Tuberculosis, active
Tumors, malignant, or of the brain or spinal cord or peripheral nerves
Ulcers, peptic (gastric or duodenal)

and such other chronic diseases as the Administrator may add to this list.

* * * * * * *

(5) The term "radiation-exposed veteran" has the same meaning given such term in section 451 of this title.

(6) The term "DNA estimate" means the radiation exposure estimate calculated by the Defense Nuclear Agency of the Department of Defense pursuant to the guidelines, as in effect on July 31, 1987, prescribed by the Secretary of Defense pursuant to section 7(a)(1) of

the Veterans' Dioxin and Radiation Compensation Standards Act (Public Law 98-542).

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SUBCHAPTER II—WARTIME DISABILITY COMPENSATION

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§ 312. Presumptions relating to certain diseases and disabilities

(a) * * *

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(b) For the purposes of section 310 of this title and subject to the provisions of section 313 of this title, in the case of a veteran who is a former prisoner of war and who was detained or interned for not less than thirty days, the disease of—

(1) avitaminosis,
(2) beriberi (including beriberi heart disease),
(3) chronic dysentery,
(4) helminthiasis,
(5) malnutrition (including optic atrophy associated with malnutrition),
(6) pellagra,
(7) any other nutritional deficiency,
(8) psychosis,
(9) any of the anxiety states,
(10) dysthymic disorder (or depressive neurosis),
(11) organic residuals of frostbite, if the Administrator determines that the veteran was interned in climatic conditions consistent with the occurrence of frostbite, **[**or**]**
(12) post-traumatic osteoarthritis,
(13) peripheral neuropathy,
(14) irritable bowel syndrome, or
(15) peptic ulcer disease,

which became manifest to a degree of 10 percent or more after active military, naval, or air service shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of such disease during the period of service.

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SUBCHAPTER VI—GENERAL COMPENSATION PROVISIONS

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§ 354. Consideration to be accorded time, place and circumstances of service

(a) * * *

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(c) For the purpose of adjudicating a claim for benefits under chapters 11, 13, or 14 of this title, submitted by a radiation-exposed veteran or by the survivor of a radiation-exposed veteran, the veteran's estimated service-related radiation exposure shall be the total of the highest radiation exposure estimate determined by the Direc-

tor of the Defense Nuclear Agency (or any other appropriate office of the Department of Defense) for that individual, as established by film badge reading, reconstruction, or a combination of film badge reading and reconstruction, plus—

(1) in the case of a radiation-exposed veteran who was exposed to ionizing radiation through such veteran's participation in an operation in the United States Government's nuclear weapons testing program—

(A) an additional 5 rems, if the DNA estimates indicate that 25 percent or more of the members of the radiation-exposed veteran's service branch participating in the operation, or 25 percent or more of the total number of participants in the operation, were exposed to more than 3 rems of ionizing radiation;

(B) an additional 3 rems, if the DNA estimates indicate that 25 percent or more of the members of the radiation-exposed veteran's service branch participating in the operation, or 25 percent or more of the total number of participants in the operation, were exposed to more than 1 rem of ionizing radiation, or

(C) an additional 1 rem, if the DNA estimates indicate that 20 percent or more of the members of the radiation-exposed veteran's service branch participating in the operation, or 20 percent or more of the total number of participants in the operation, were exposed to more than 0.5 rem of ionizing radiation;

(2) in the case of a radiation-exposed veteran who was exposed to ionizing radiation through such veteran's participation in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, an additional 1 rem; or

(3)(A) in the case of a radiation-exposed veteran who was exposed to ionizing radiation through such veteran's participation in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, and participated in one or more nuclear weapons tests, the total of the highest number of rems determined for such veteran under subclauses (A), (B), and (C) of clause (1) of this subsection plus any number of rems determined under clause (2) of this subsection; or

(B) in the case of a radiation-exposed veteran who was exposed to ionizing radiation through such veteran's participation in more than one nuclear weapons test, the total of the highest numbers of rems determined for such veteran under subclauses (A), (B), and (C) of clause (1) of this subsection.

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CHAPTER 13—DEPENDENCY AND INDEMNITY COMPENSATION FOR SERVICE-CONNECTED DEATHS

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SUBCHAPTER II—DEPENDENCY AND INDEMNITY COMPENSATION

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§ 415. Dependency and indemnity compensation to parents

(a) * * *

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(f)(1) In determining income under this section, all payments of any kind or from any source shall be included, except—

(A) payments of the six-months' death gratuity;

(B) donations from public or private relief or welfare organizations;

(C) payments under this chapter (except section 412(a)) and chapters 11 and 15 of this title and under the first sentence of section 9(b) of the Veterans' Pension Act of 1959;

(D) lump-sum death payments under title II of the Social Security Act (42 U.S.C. 401 et seq.);

(E) payments of bonus or similar cash gratuity by any State based upon service in the Armed Forces;

(F) payments under policies of servicemen's group life insurance, United States Government life insurance or national service life insurance, and payments of servicemen's indemnity;

(G) 10 percent of the amount of payments to an individual under public or private retirement, annuity, endowment, or similar plans or programs;

(H) amounts equal to amounts paid by a parent of a deceased veteran for—

(i) a deceased spouse's just debts,

(ii) the expenses of the spouse's last illness to the extent such expenses are not reimbursed under chapter 51 of this title, and

(iii) the expenses of the spouse's burial to the extent that such expenses are not reimbursed under chapter 23 or chapter 51 of this title;

[(I) proceeds of fire insurance policies;]

(I) reimbursement of any kind for any casualty loss, as defined in regulations which the Administrator shall prescribe, but in no event shall the amount to be excluded exceed the greater of the fair market value or reasonable replacement value of the property involved immediately preceding the loss;

(J) amounts equal to amounts paid by a parent of a deceased veteran for—

(i) the expenses of the veteran's last illness, and

(ii) the expenses of such veteran's burial to the extent that such expenses are not reimbursed under chapter 23 of this title;

(K) profit realized from the disposition of real or personal property other than in the course of a business;

(L) payments received for discharge of jury duty or obligatory civic duties;

(M) payments of annuities elected under subchapter I of chapter 73 of title 10.

(2) Where a fraction of a dollar is involved, annual income shall be fixed at the next lower dollar.

(3) The Administrator may provide by regulation for the exclusion from income under this section of amounts paid by a parent for unusual medical expenses.

* * * * * * *

CHAPTER 14—DISABILITY AND DEATH BENEFITS FOR CERTAIN VETERANS EXPOSED TO IONIZING RADIATION AND THEIR SURVIVORS

Sec.
451. Definitions.
452. Disability and death benefits for radiation-exposed veterans and their survivors.
453. Rates of disability and death benefits.
454. Special consideration in connection with other diseases.
455. Contrary affirmative evidence.
456. Other benefits.

§ 451. Definitions

For the purpose of this chapter, the term "radiation-exposed veteran" means a veteran (including a person who died in the active military, naval, or air service) who, in connection with such veteran's participation in the United States Government's test of a nuclear device or in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, was exposed to ionizing radiation from the detonation of a nuclear device during such veteran's service.

§ 452. Disability and death benefits for radiation-exposed veterans and their survivors

(a) In the case of a radiation-exposed veteran who suffers or has died from a disease specified in subsection (c)(1) of this section, the Administrator shall pay a monthly disability benefit to such veteran or a monthly death benefit to the survivors of such veteran in accordance with section 453 of this title.

(b) In the case of a radiation-exposed veteran who suffers or has died from a disease specified in subsection (c)(2) of this section and whose estimated service-related radiation exposure, as computed pursuant to section 354(c) of this title, exceeds 1 rem, the Administrator shall pay a monthly disability benefit to such veteran or a monthly death benefit to the survivors of such veteran in accordance with section 453 of this title.

(c)(1) The diseases referred to in subsection (a) of this section are the following:

(A) cancer of the thyroid, when manifested 5 or more years after the first date on which the radiation-exposed veteran participated in the ionizing radiation-exposing activity;

(B) leukemia (except for chronic lymphocytic leukemia), when manifested within 30 years after the last date on which the radiation-exposed veteran participated in the ionizing radiation-exposing activity.

(2) The diseases referred to in subsection (b) of this section are the following, when manifested 5 or more years after the first date on which the radiation-exposed veteran participated in the ionizing radiation-exposed activity:

(A) cancer of the small intestine;

(B) cancer of the stomach;

(C) cancer of the liver, except where cirrhosis or hepatitis B is indicated;

(D) cancer of the bile ducts;

(E) cancer of the gallbladder;

(F) cancer of the pancreas;

(G) lymphomas (excluding Hodgkin's disease); and

(H) multiple myeloma.

(d) A benefit may not be paid under this section with respect to a disease or the death of a radiation-exposed veteran for any month for which compensation is payable to that veteran for that disease under chapter 11 of title 38, United States Code, or for which dependency and indemnity compensation is payable for that death under chapter 13 of such title.

§453. Rates of disability and death benefits

A disability benefit payable to a veteran for a disease specified in section 452(c) of this title shall be paid at the rate at which compensation would be payable under chapter 11 of this title for the disability resulting from such disease if the disability were determined to be service connected, and a death benefit payable to the survivors of a radiation-exposed veteran pursuant to section 452 of this title shall be paid based on the eligibility requirements (other than any requirement relating to the service-connection or compensability of a disability) and at the rates that apply to benefits under chapter 13 of this title.

§454. Special consideration in connection with other diseases

(a) When a claim is filed by a radiation-exposed veteran or a survivor of a radiation-exposed veteran for benefits under chapter 11 or chapter 13 of this title, in connection with any disease specified in subsection (b) of this section and such veteran's estimated service-related radiation exposure, as computed pursuant to subsection (c) of section 354 of this title, exceeds 1 rem, the Administrator shall give special consideration to the adjudication of such claim, including giving conclusive weight to the findings of the Congress set forth in section 2 of the Veterans' Radiation Exposure Disability and Death Benefits Act of 1987 relating to the relationship between the disease for which benefits are claimed and ionizing radiation exposure, in the process of evaluating the claim using the radiation-exposed veteran's estimated service-related radiation exposure as computed pursuant to section 354(c) of this title.

(b) The diseases referred to in subsection (a) of this section are the following, when manifested 5 or more years after the first date on which the radiation-exposed veteran participated in the ionizing radiation-exposing activity:

(1) Cancer of the lung;

(2) cancer of the colon;

(3) cancer of the esophagus;

(4) cancer of the rectum;

(5) cancer of the pharynx;

(6) cancer of the liver where cirrhosis or hepatitis B is indicated;

(7) cancer of the kidney;

(8) cancer of the urinary tract;

(9) cancer of the bladder;
(10) cancer of the brain and nervous system;
(11) cancer of the salivary glands;
(12) cancer of the bones and joints; and
(13) cutaneous melanoma.

§ 455. Contrary affirmative evidence

The provisions of this chapter shall not apply with respect to a disease occurring in a radiation-exposed veteran—

(1) where there is affirmative evidence that the disease was not incurred as the result of the veteran's participation in the United States Government's test of a nuclear device or in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946; or

(2) where there is affirmative evidence to establish that an intercurrent injury or disease which is a recognized cause of the disease was suffered by the veteran between the date of the veteran's most recent participation in such a test or in such occupation and the onset of such described disease.

§ 456. Other benefits

(a) Any disease establishing eligibility for a disability or death benefit under this chapter shall be treated for purposes of all other laws of the United States (other than chapters 11 and 13 of this title) as if such disease were service connected.

(b) Receipt of any disability or death benefit under this chapter shall be treated for purposes of all other laws of the United States as if such benefit were compensation under chapter 11 of this title or dependency and indemnity compensation under chapter 13 of this title, respectively.

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CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

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SUBCHAPTER II—HOSPITAL, NURSING HOME OR DOMICILIARY CARE AND MEDICAL TREATMENT

610. Eligibility for hospital, nursing home, and domiciliary care.
611. Care during examinations and in emergencies.
612. Eligibility for medical treatment.
612A. Eligibility for readjustment counseling and related mental health services.
612B. Counseling for former prisoners of war.
613. Medical care for survivors and dependents of certain veterans.
614. Fitting and training in use of prosthetic appliances; seeing-eye dogs.
[615. Tobacco for hospitalized veterans.]
616. Hospital care by other agencies of the United States.
617. Invalid lifts and other devices.
618. Therapeutic and rehabilitative activities.
619. Repair or replacement of certain prosthetic and other appliances.
620. Transfers for nursing home care; adult day health care.
620A. Treatment and rehabilitation for alcohol or drug dependence or abuse disabilities.
620B. Respite care.
620C. Community-based psychiatric residential treatment for chronically mentally ill veterans.

620D. Noninstitutional alternatives to institutional care; pilot program.

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SUBCHAPTER I—GENERAL

§ 601. Definitions

For the purposes of this chapter—

(1) * * *

* * * * * * *

(6) The term "medical services" includes, in addition to medical examination, treatment, and rehabilitative services—

(A)(i) surgical services, *(ii) services to achieve pregnancy in a veteran or a veteran's spouse where such services are necessary to overcome a service-connected disability impairing the veteran's procreative ability, (iii)* dental services and appliances as described in sections 610 and 612 of this title,*) (iv)* optometric and podiatric services *(v)* (in the case of a person otherwise receiving care or services under this **[**chapter),**]** *chapter)* preventive health-care services as defined in section 662 of this title, **[**and**]** *(vi)* (except under the conditions described in section 612(f)(1)(A)(i) of this **[**title),**]** *title)* wheelchairs, artificial limbs, **[**trusses,**]** *trusses* and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as the Administrator determines to be reasonable and necessary, and **[**(ii)**]** *(vii)* travel and incidental expenses pursuant to the provisions of section 111 of this title; and

(B)(i) such consultation, professional counseling, training, and mental health services as are necessary in connection with the treatment—

(I) of the service-connected disability of a veteran pursuant to section 612(a) of this title, and

(II) in the discretion of the Administrator, of the nonservice-connected disability of a veteran eligible for treatment under section 612(f)(l)(A)(ii) of this title where such services were initiated during the veteran's hospitalization and the provision of such services on an outpatient basis is essential to permit the discharge of the veteran from the hospital,

for the members of the immediate family or legal guardian of a veteran, or the individual in whose household such veteran certifies an intention to live, as may be essential to the effective treatment and rehabilitation of the veteran (including, under the terms and conditions set forth in section 111 of this title, travel and incidental expenses of such family member or individual in the case of a veteran who is receiving care for a service-connected disability, or in the case of a dependent or survivor of a veteran receiving care under the last sentence of section 613(b) of this title); and

(ii) in the case of an individual who was a recipient of services under subclause (i) of this clause at the time of—

(I) the unexpected death of the veteran; or

(II) the death of the veteran while the veteran was participating in a hospice program (or a similar program) conducted by the Administrator,

such counseling services, for a limited period, as the Administrator determines to be reasonable and necessary to assist such individual with the emotional and psychological stress accompanying the veteran's death.

For the purposes of this paragraph, a dependent or survivor of a veteran receiving care under the last sentence of section 613(b) of this title shall be eligible for the same medical services as a veteran.

* * * * * * *

§ 603. Contracts for hospital care and medical services in non-Veterans' Administration facilities

(a) When Veterans' Administration facilities are not capable of furnishing economical hospital care or medical services because of geographical inaccessibility or are not capable of furnishing the care or services required, the Administrator, as authorized in section 610 or 612 of this title, may contract with non-Veterans' Administration facilities in order to furnish—

(1) hospital care or medical services to a veteran for the treatment of—

(A) a service-connected disability; or

(B) a disability for which a veteran was discharged or released from the active military, naval, or air service;

(2) medical services for the treatment of any disability of—

(A) a veteran described in section 612(a)(1)(B) of this title;

(B) a veteran described in section 612(f)(1)(A)(ii) of this title; or

(C) a veteran described in section 612(g) of this title if the Administrator has determined, based on an examination by a physician employed by the Veterans' Administration (or, in areas where no such physician is available, by a physician carrying out such function under a contract or fee arrangement), that the medical condition of such veteran precludes appropriate treatment in Veterans' Administration facilities;

(3) hospital care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a veteran receiving medical services in a Veterans' Administration facility *or nursing home care under section 620 of this title* until such time following the furnishing of care in the non-Veterans' Administration facility as the veteran can be safely transferred to a Veterans' Administration facility;

(4) hospital care for women veterans;

(5) hospital care, or medical services that will obviate the need for hospital admission, for veterans in a State not contiguous to the contiguous States, except that the annually determined hospital patient load and incidence of the furnishing of medical services to veterans hospitalized or treated at the expense of the Veterans' Administration in Government and

non-Veterans' Administration facilities in each such noncontiguous State shall be consistent with the patient load or incidence of the furnishing of medical services for veterans hospitalized or treated by the Veterans' Administration within the 48 contiguous States, but the authority of the Administrator under this paragraph with respect to the Commonwealth of Puerto Rico shall expire on September 30, 1988, and until such date the Administrator may, if necessary to prevent hardship, waive the applicability to the Commonwealth of Puerto Rico to the restrictions in this paragraph with respect to hospital patient loads and the incidence of the furnishing of medical services;

(6) diagnostic services necessary for determination of eligibility for, or of the appropriate course of treatment in connection with, furnishing medical services at independent Veterans' Administration out-patient clinics to obviate the need for hospital admission; **[**or**]**

(7) outpatient dental services and treatment, and related dental appliances, for a veteran described in section 612(b)(1)(G) of this **[**title.**]** *title; or*

(8) diagnostic services (on an inpatient or outpatient basis) for observation or examination of a person to determine eligibility for a benefit or service under laws administered by the Veterans' Administration.

* * * * * * *

SUBCHAPTER II—HOSPITAL, NURSING HOME OR DOMICILIARY CARE AND MEDICAL TREATMENT

§ 610. Eligibility for hospital, nursing home, and domiciliary care

(a) * * *

* * * * * * *

[(b) The Administrator, within the limits of Veterans' Administration facilities, may furnish domiciliary care to—

[(1) a veteran who was discharged or released from the active military, naval, or air service for a disability incurred or aggravated in line of duty, or a person who is in receipt of disability compensation, when such person is suffering from a permanent disability or tuberculosis or neuropsychiatric ailment and is incapacitated from earning a living and has no adequate means of support; and

[(2) a veteran who is in need of domiciliary care if such veteran is unable to defray the expenses of necessary domiciliary care.**]**

(b) The Administrator, through Veterans' Administration facilities, may furnish such domiciliary care as the Administrator determines is needed by a veteran for the purpose of receiving treatment or rehabilitation if the Administrator finds, pursuant to regulations which the Administrator shall prescribe, that the veteran—

(1) has a service-connected disability, or

(2) is incapacitated from earning a living and has no adequate means of support.

* * * * * * *

§ 612. Eligibility for medical treatment

(a) * * *

* * * * * * *

(b)(1) Outpatient dental services and treatment, and related dental appliances, shall be furnished under this section only for a dental condition or disability—

(A) which is service-connected and compensable in degree;

(B) which is service-connected, but not compensable in degree, but only if—

(i) the dental condition or disability is shown to have been in existence at time of discharge or release from active military, naval, or air service;

(ii) the veteran had served on active duty for a period of not less than one hundred and eighty days immediately before such discharge or release;

(iii) application for treatment is made within ninety days after such discharge or release, except that (I) in the case of a veteran who reentered active military, naval, or air service within ninety days after the date of such veteran's prior discharge or release from such service, application may be made within ninety days from the date of such veteran's subsequent discharge or release from such service, and (II) if a disqualifying discharge or release has been corrected by competent authority, application may be made within ninety days after the date of correction; and

(iv) the veteran's certificate of discharge or release from active duty does not bear a certification that the veteran was provided, within the ninety-day period immediately before the date of such discharge or release, a complete dental examination (including dental X-rays) and all appropriate dental services and treatment indicated by the examination to be needed;

(C) which is a service-connected dental condition or disability due to combat wounds or other service trauma, or of a former prisoner of war;

(D) which is associated with and is aggravating a disability resulting from some other disease or injury which was incurred in or aggravated by active military, naval, or air service;

(E) which is a non-service connected condition or disability of a veteran for which treatment was begun while such veteran was receiving hospital care under this chapter and such services and treatment are reasonably necessary to complete such treatment;

(F) from which a veteran of the Spanish-American War or Indian wars is suffering;

(G) from which a veteran who is a former prisoner of war and who was detained or interned for a period of not less than [six months] *90 days* is suffering; or

(H) from which a veteran who has a service-connected disability rated as total is suffering.

* * * * * * *

(l)(1) The Administrator may provide or, in cooperation with any organization named in or approved under section 3402 of this title, assist in providing recreational activities which would further the rehabilitation of disabled veterans if—

(A) such activities are available to disabled veterans on a national basis, and

(B) a significant percentage of the individuals participating in such activities are eligible for rehabilitative services under this chapter.

(2) The Administrator, notwithstanding any other provision of law, may accept contributions of funds and other assistance from any appropriate source for the support of such activities and may permit any individual, organization, or corporation which has made such a contribution, or provided such assistance, to advertise the activity or their participation therein, if—

(A) the Administrator has approved any such advertisement, and

(B) such advertisement contains a clear statement that any product, project, or commercial line of endeavor has not been endorsed by the Veterans' Administration.

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[§ 615. Tobacco for hospitalized veterans

[The Administrator may furnish tobacco to veterans receiving hospital or domiciliary care.]

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§ 620. Transfers for nursing home care; adult day health care

(a)(1) * * *

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(2) The Administrator may transfer a person to a nursing home under this subsection only if the Administrator determines that the cost to the United States of the care of such person in the nursing home will not exceed—

(A) the amount equal to 45 percent of the cost of care [furnished by the Veterans' Administration in a general hospital under the direct jurisdiction of the Administration] (as [such cost may be] determined annually by the [Administrator); or] *Administrator)—*

(i) (except as provided in subclause (ii) of this clause) furnished by the Veterans' Administration in a general hospital under the jurisdiction of the Administrator, or

(ii) in the case of care in a State in which there are no general hospitals under such jurisdiction, furnished by a

non-Veterans' Administration hospital under contract with the Veterans' Administration; or

(B) the amount equal to 50 percent of such cost, if such higher amount is determined to be necessary by the Administrator (upon the recommendation of the Chief Medical Director) to provide adequate care.

* * * * * * *

§ 620D. Noninstitutional alternatives to institutional care; pilot program

(a)(1) The Administrator, during the period beginning January 1, 1988, and ending December 31, 1991, and subject to subsection (c) of this section, shall conduct a pilot program under which veterans eligible under this chapter for and otherwise in need of hospital, nursing home, or domiciliary care will be furnished medical, rehabilitative, and health-related services in noninstitutional settings at not less than five nor more than ten demonstration project sites.

(2) In selecting veterans for participation in the program, the Administrator shall accord priority to veterans who have service-connected disabilities, to veterans who are sixty-five years of age or older, to veterans who are totally and permanently disabled, and to veterans who are suffering from Alzheimer's disease or other forms of dementia.

(b)(1)(A) In the conduct of the program, the Administrator shall (i) furnish appropriate health-related services solely through contracts with appropriate public and private agencies that provide such services, and (ii) in the case of each veteran furnished services under the program, appoint a Veterans' Administration health-care employee to furnish case management services.

(B) For the purposes of subparagraph (A) of this paragraph, "case management" includes the coordination and facilitation of all services furnished to a veteran by the Veterans' Administration, either directly or through contract, including, but not limited to, screening, assessment of needs, planning, referral (including referral for services to be furnished by the Veterans' Administration, either directly or through a contract, or by an entity other than the Veterans' Administration) monitoring, reassessment, and follow up.

(2) In order to evaluate the cost-effectiveness of utilizing certain health services of agencies other than the Veterans' Administration in cases in which no Veterans' Administration facility in the vicinity of a demonstration project provides such services, the Administrator, in not more than two of the demonstration projects, may utilize appropriate health services of appropriate public and private agencies that furnish such services.

(3) The Administrator may provide in-kind assistance (through the services of Veterans' Administration employees and the sharing of other Veterans' Administration resources) to a facility furnishing services to veterans under subparagraph (1)(A)(i) of this subsection. Any such in-kind assistance shall be provided under a contract between the Veterans' Administration and the facility concerned. The Administrator may provide such assistance only for use solely in the furnishing of appropriate services under this section and only if, under such contract, the Veterans' Administration receives reim-

bursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds alloted to the Veterans' Administration facility that provided the assistance.

(c) The total cost of conducting the pilot program under this section shall not exceed 60 percent of the cost that would have been incurred by the Veterans' Administration during the period of the pilot program if the veterans furnished services under the pilot program had been furnished, instead, nursing home care under section 610 of this title. In any fiscal year, the cost of carrying out the pilot program shall not exceed 65 percent of the cost that would have been so incurred during such year in furnishing the veterans who received services under the pilot program with nursing home care under such section 610.

(d) Not later than April 1, 1991, the Administration shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report setting forth the Administrator's evaluation, findings, and conclusions regarding the pilot program, and its results for the participating veterans, during its first 36 months. The report shall include a description of the conduct of the program (including a description of the veterans furnished services and of the services furnished under the pilot program), and any plans for administrative action, and any recommendations for legislation, that the Administrator considers appropriate to include in the report.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS RELATING TO HOSPITAL AND NURSING HOME CARE AND MEDICAL TREATMENT OF VETERANS

§ 621. Power to make rules and regulations

[The Administrator shall prescribe—

[(1) such rules and procedure governing the furnishing of hospital, nursing home, and domiciliary care as the Administrator may deem proper and necessary;

[(2) limitations in connection with the furnishing of hospital, nursing home, and domiciliary care; and

[(3) such rules and regulations as the Administrator deems necessary in order to promote good conduct on the part of persons who are receiving hospital, nursing home, or domiciliary care in Veterans' Administration facilities.]

The Administrator shall prescribe all rules and regulations which are necessary and appropriate to govern the furnishing of hospital, nursing home, and domiciliary care and medical services under laws administered by the Veterans' Administration and which are consistent therewith (including such rules and regulations as are necessary and appropriate in order to promote good conduct on the part of persons who are receiving such care or services in Veterans' Administration facilities), except that the Administrator may prescribe, in such rules and regulations, limitations in connection with the furnishing of such care during a period of national *emergency (other than a period of war or an emergency described in section 5011A of this title).*

§ 622. Determination of inability to defray necessary expenses; income thresholds

(a)(1) * * *

* * * * * * *

(g) For the purposes of [sections 610(b)(2) and] *section* 624(c) of this title, the fact that a veteran is—

(1) eligible to receive medical assistance under a State plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

(2) a veteran with a service-connected disability; or

(3) in receipt of pension under any law administered by the Veterans' Administration,

shall be accepted as sufficient evidence of such veteran's inability to defray necessary expenses.

* * * * * * *

§ 624. Hospital care, medical services, and nursing home care abroad

(a) * * *

* * * * * * *

[(b) The Administrator may furnish necessary hospital care and medical services to any otherwise eligible veteran for any service-connected disability if the veteran (1) is a citizen of the United States sojourning or residing abroad, or (2) is in the Republic of the Philippines.]

(b) The Administrator may furnish to any otherwise eligible veteran who is sojourning or residing abroad such hospital care and medical services as the Administrator determines are needed (A) for a service-connected disability, or (B) as part of a rehabilitation program under chapter 31 of this title.

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§ 629. Recovery by the United States of the cost of certain care and services

(a)(1) * * *

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(b)(1) * * *

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(2)(A) * * *

* * * * * * *

(C) A legal proceeding under subparagraph (B) of this paragraph with respect to care or services furnished to any veteran under this chapter may not be sustained if such proceeding is instituted more than 6 years after the last day on which such care or services are furnished to such veteran.

* * * * * * *

SUBCHAPTER V—PAYMENTS TO STATE HOMES

§ 641. Criteria for payment

(a) The Administrator shall pay each State at the per diem rate of—

(1) **[**$7.30**]** *$8.70* for domiciliary **[**care,**]** *care; and*

(2) **[**$17.05**]** *$20.35* for nursing home *and hospital* care, **[**and**]**

[(3) $15.25 for hospital care,**]**

for each veteran receiving such care in a State home, if such veteran is eligible for such care in a Veterans' Administration facility.

* * * * * * *

(d) Whenever the Administrator makes a determination pursuant to section 620(a)(2)(A) of this title that the cost of care furnished by the Veterans' Administration in a general hospital under the direct jurisdiction of the Administrator has increased, the Administrator may, effective no earlier than the date of such determination, increase the rates paid under subsection (a) of this section by a percentage not greater than the percentage by which the Administrator has determined that such cost of care has increased.

(e) Payments made to States pursuant to this section—

(1) shall not be considered to be a third-party liability for any purpose under section 1902(a)(25) of title XIX of the Social Security Act; and

(2) shall, for purposes of determining under such title XIX the reasonable costs of services provided by a State home, not be deducted directly or indirectly from the operating or other costs of such State home.

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CHAPTER 19—INSURANCE

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752. Optional settlement.
753. Assignments.
754. Forfeiture.
755. United States Government Life Insurance Fund.
756. Military and naval insurance appropriation.
757. Extra hazard costs.
758. Statutory total permanent disability.
759. Waiver of disability for reinstatement.
760. Waiver of premium payments on due date.
761. Authority for higher interest rates for amounts payable to beneficiaries.
762. Authority for higher monthly installments payable to certain annuitants.

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SUBCHAPTER I—NATIONAL SERVICE LIFE INSURANCE

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§ 727. Authority for higher monthly installments payable to certain annuitants

(a) Notwithstanding sections 702, 723, and 725 of this title, the Administrator may from time to time adjust the dollar amount of the monthly installments payable to a beneficiary of National Service Life Insurance, Veterans Special Life Insurance, or Veterans Reopened Insurance who is receiving such proceeds under a life annuity settlement option. The Administrator may make such adjustments only in accordance with a determination that the adjustments are administratively and actuarially sound for the program of insurance concerned.

(b) The Administrator shall determine the amount in the trust funds in the Treasury held for payment of proceeds to National Service Life Insurance, Veterans Special Life Insurance, and Veterans Reopened Insurance beneficiaries attributable to interest and mortality gains on the reserves held for annuity accounts. Such amount shall be available for distribution to the life annuitants referred to in subsection (a) as a fixed percentage of, and in addition to, the monthly installment amount to which the annuitants are entitled under this subchapter. For the purposes of this section, gains on the reserves are defined as funds attributable solely to annuity accounts that are in excess of actuarial liabilities.

(c) The monthly annuity amounts authorized in sections 702, 723, and 725 of this title shall remain the minimum rates payable.

SUBCHAPTER II—UNITED STATES GOVERNMENT LIFE INSURANCE

* * * * * * *

§ 762. Authority for higher monthly installments payable to certain annuitants

(a) Notwithstanding section 744 of this title, the Administrator may from time to time adjust the dollar amount of the monthly installments payable to a beneficiary of United States Government Life Insurance who is receiving such proceeds under a life annuity settlement option. The Administrator may make such adjustments only in accordance with a determination that the adjustments are administratively and actuarially sound.

(b) The Administrator shall determine the amount in the trust fund in the Treasury held for payment of proceeds to United States Government Life Insurance beneficiaries attributable to interest and mortality gains on the reserves held for annuity accounts. Such amount shall be available for distribution to the life annuitants referred to in subsection (a) as a fixed percentage of, and in addition to, the monthly installment amount to which the annuitants are entitled under this subchapter. For the purposes of this section, gains on the reserves are defined as funds attributable solely to annuity accounts that are in excess of actuarial liabilities.

(c) In no event shall calculations of the monthly installment amount be less than that authorized in section 744 of this title.

SUBCHAPTER III—SERVICEMEN'S GROUP LIFE INSURANCE

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§ 769. Deductions; payment; investment; expenses

(a)(1) * * *

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(g)(1) No tax, fee, or other monetary payment may be imposed or collected by any State, or by any political subdivision or other governmental authority thereof, on or with respect to any premium paid under an insurance policy purchased under this subchapter.

(2) Paragraph (1) of this subsection shall not be construed to exempt any company issuing a policy of insurance under this subchapter from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by that company from business conducted under this subchapter, if that tax, fee, or payment is applicable to a broad range of business activity.

* * * * * * *

CHAPTER 21—SPECIALLY ADAPTED HOUSING FOR DISABLED VETERANS

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§ 802. Limitations on assistance furnished

(a) The assistance authorized by section 801(a) of this title shall be limited in the case of any veteran to one housing unit, and necessary land therefor, and shall be afforded under one of the following plans, at the option of the veteran but shall not exceed [$35,500] *$40,000* in any one case—

(1) where the veteran elects to construct a housing unit on land to be acquired by such veteran, the Administrator shall pay not to exceed 50 percent of the total cost to the veteran of (A) the housing unit and (B) the necessary land upon which it is to be situated;

(2) where the veteran elects to construct a housing unit on land acquired by such veteran prior to application for assistance under this chapter, the Administrator shall pay not to exceed the smaller of the following sums: (A) 50 percent of the total cost to the veteran of the housing unit and the land necessary for such housing unit, or (B) 50 percent of the cost to the veteran of the housing unit plus the full amount of the unpaid balance, if any, of the cost to the veteran of the land necessary for such housing unit;

(3) where the veteran elects to remodel a dwelling which is not adapted to the requirements of such veteran's disability, acquired by such veteran prior to application for assistance under this chapter, the Administrator shall pay not to exceed (A) the cost to the veteran of such remodeling; or (B) 50 percent of the cost to the veteran of such remodeling; plus the smaller of the following sums: (i) 50 percent of the cost to the veteran of such dwelling and the necessary land upon which it is situated, or (ii) the full amount of the unpaid balance, if any, of the cost to the veteran of such dwelling and the necessary land upon which it is situated; and

(4) where the veteran has acquired a suitable housing unit, the Administrator shall pay not to exceed the smaller of the following sums: (A) 50 percent of the cost to the veteran of such housing unit and the necessary land upon which it is situated, or (B) the full amount of the unpaid balance, if any, of the cost to the veteran of such housing unit and the necessary land upon which it is situated.

(b) Except as provided in section 804(b) of this title, the assistance authorized by section 801(b) of this title shall be limited to the lesser of—

(1) the actual cost, or, in the case of a veteran acquiring a residence already adapted with special features, the fair market value, of the adaptations determined by the Administrator under such section 801(b) to be reasonably necessary, or

(2) [$6,000.] *$6,775.*

* * * * * * *

§ 806. Mortgage Protection Life Insurance

(a) The Administrator is [authorized, without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), to purchase from one or more life insurance companies a policy or policies of mortgage protection life insurance on a group basis to provide the benefits specified in this section.] *authorized—*

(1) to establish a program that provides the insurance benefits specified in this section and to obligate the United States to pay the insurance benefits under such program; or

(2) to purchase from one or more life insurance companies, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), a policy or policies of mortgage protection life insurance on a group basis to provide such benefits.

(b) [Any policy of insurance purchased by the Administrator under this section] *Any program established under subsection (a)(1) of this section and any policy of insurance purchased by the Administrator under subsection (a)(2) of this section* shall be placed in effect on a date determined by the Administrator and shall automatically insure any eligible veteran who is or has been granted assistance in securing a suitable housing unit under this chapter against the death of the veteran, unless the veteran elects in writing not to be insured under this section or fails to timely respond to a request from the Administrator for information on which the veteran's premium can be based.

* * * * * * *

(d) The premium rates charged a veteran for insurance under this section shall be paid at such times and in such manner as the Administrator shall prescribe and shall be based on such mortality data as the Administrator deems appropriate to cover only the mortality cost of insuring standard lives. The Administrator is authorized and directed to deduct the premiums charged veterans for life insurance under this section from any compensation or other cash benefits payable to them by the Veterans' Administration [and] *and, in the case of insurance purchased under subsection (a)(2) of this section,* to pay such premiums to the insurer or insurers for such insurance. Any veteran's insured hereunder not eligible for cash benefits from the Veterans' Administration may pay the amount of the veterans' premiums [directly to the insurer or insurers] *directly to the United States (in the case of an insurance program established under subsection (a)(1) of this section) or directly to the insurer or insurers (in the case of insurance purchased under subsection (a)(2) of this section)* for insurance hereunder.

(e)*(1)* The United States shall bear all of the cost of the insurance provided under this section except the amount of the premium rates established for eligible veterans under subsection (d) as the mortality cost of insuring standard lives.

(2) Premiums collected for insurance under any program established under subsection (a)(1) of this section shall be credited to the "Veterans Insurance and Indemnities" appropriation and all disbursements of insurance proceeds under such program shall be made from that appropriation.

(3) For each month for which any eligible veteran is insured under a policy purchased under *subsection (a)(2) of* this section there shall be contributed to the insurer or insurers issuing the policy or policies from the appropriation "Compensation and Pensions, Veterans' Administration" an amount necessary to cover the cost of the insurance in excess of the premiums established for eli-

gible veterans, including the cost of administration and the cost of the excess mortality attributable to the veterans' disabilities.

(4) Appropriations to carry out the purposes of this section are hereby authorized.

* * * * * * *

(h) With respect to insurance [contracted for] *provided* under this section, the Administrator is authorized to adopt such regulations relating to eligibility of the veteran for insurance, maximum amount of insurance, maximum duration of insurance, and other pertinent factors not specifically provided for in this section, which in the Administrator's judgment are in the best interest of veterans or the Government. Insurance [contracted for] *provided* under this section shall take effect as to eligible veterans heretofore granted assistance under this chapter on a date determined by the Administrator, and as to eligible veterans hereafter granted assistance under this chapter at the time of the closing of the veteran's loan. The amount of the insurance at any time shall be the amount necessary to pay the mortgage indebtedness in full, except as otherwise limited by the [policy.] *Administrator (in the case of a program established under subsection (a)(1) of this section) or by a policy purchased under subsection (a)(2) of this section.*

(i) Insurance [contracted for] *provided in the case of any veteran* under this section shall terminate upon whichever of the following events first occurs:

(1) satisfaction of the veterans' indebtedness under the loan upon which the insurance is based;

(2) the veteran's seventieth birthday;

(3) termination of the veteran's ownership of the property securing the loan;

(4) discontinuance of payment of premiums by the veteran; or

(5) discontinuance of the [entire contract or agreement.] *insurance program or, in the case of insurance contracted for under subsection (a)(2) of this section, the contract.*

(j) Termination [of the mortgage protection] life insurance *under this section* will in no way affect the guaranty or insurance of the loan by the Administrator.

(k)(1) There may not be in effect at the same time any program under subsection (a)(1) of this section and any insurance contract purchased under subsection (a)(2) of this section.

(2) The Administrator may terminate any program referred to in paragraph (1) of this subsection or any contract referred to in such paragraph in order to comply with the requirements of such paragraph.

(l) The Administrator shall ensure that a veteran who is insured under a program or life insurance policy terminated under subsection (k) of this section shall continue to be insured under any successor program established under subsection (a)(1) of this section or any successor policy purchased under subsection (a)(2) of this section.

(m)(1) In the case of any policy of insurance purchased in accordance with this section that is terminated under subsection (k) of this section—

(A) the amount equal to the total amount of the premiums collected or received by an insurer under such policy on or after the date of the termination, and

(B) any positive balance in the contingency reserve maintained by the insurer under such policy that remains after all charges have been made to such reserve,

shall be paid to the Administrator and shall be deposited in the Treasury of the United States.

(2) Any insurer that is required to pay an amount out of funds in a contingency reserve under paragraph (1) of this subsection may, upon the election of such insurer, pay such amount in equal monthly installments over a period of not more than 2 years.

(n) No right of a veteran or mortgage loan holder under an insurance program or policy terminated under subsection (k) of this section shall be impaired by reason of such termination if such right matured before the date of the termination.

CHAPTER 23—BURIAL BENEFITS

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§ 907. Death from service-connected disability

In any case in which a veteran dies as the result of a service-connected disability or disabilities, the Administrator, upon the request of the survivors of such veteran, shall pay the burial and funeral expenses incurred in connection with the death of the veteran in an amount not exceeding the greater of (1) **[**$1,100,**]** *$2,250,* or (2) the amount authorized to be paid under section 8134(a) of title 5 in the case of a Federal employee whose death occurs as the result of an injury sustained in the performance of duty. Funeral and burial benefits provided under this section shall be in lieu of any benefits authorized under sections 902 and 903(a)(1) and (b) of this title.

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CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

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§ 1004. Administration

(a) * * *

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(c)(1) * * *

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(2) The grave markers referred to in paragraph (1) shall be upright for interments that occur on or after January 1, 1987, except that—

(A) in the case of any cemetery scheduled to be closed by September 30, 1991, as indicated in the documents submitted by the Administrator to the Congress in justification for the amounts included for Veterans' Administration programs in the President's Budget for fiscal year 1987, the Administrator may provide for flat grave markers; **[**and**]**

(B) in the case of any cemetery with a section which has flat markers on the date of the enactment of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, the Administrator may continue to provide for flat grave markers in such [section.] *section;*

(C) in the case of any cemetery located nearby a Veterans' Administration health-care facility, the Administrator may provide for flat grave markers if the Administrator determines, upon the recommendation of the Chief Medical Director, that the use of upright markers at such cemetery would have a detrimental effect on the health of veterans receiving care at such facility; and

(D) in the case of the national cemetery in Riverside, California, and the proposed national cemetery approved by the Administrator, as of July 31, 1987, for Northern California, the Administrator shall provide for flat grave markers for interments occurring after the date of the enactment of this clause.

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PART III—READJUSTMENT AND RELATED BENEFITS

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CHAPTER 30—ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM

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SUBCHAPTER IV—TIME LIMITATION FOR USE OF ELIGIBILITY AND ENTITLEMENT; GENERAL AND ADMINISTRATIVE PROVISIONS

§ 1431. Time limitation for use of eligibility and entitlement

(a) * * *

* * * * * * *

(d)*(1)* In the case of an individual eligible for educational assistance under this chapter—

[(1)] *(A)* who was prevented from pursuing such individual's chosen program of education before the expiration of the 10-year period for use of entitlement under this chapter otherwise applicable under this section because of a physical or mental disability which was not the result of the individual's own willful [misconduct,] *misconduct or because of a condition (and under the circumstances) described in paragraph (2) of this subsection* and

[(2)] *(B)* who applies for an extension of such 10-year period within one year after [(A)] *(i)* the last day of such period, or [(B)] *(ii)* the last day on which such individual was so prevented from pursuing such program, whichever is later,

such 10-year period shall not run with respect to such individual during the period of time that such individual was so prevented from pursuing such program and such 10-year period will again begin running on the first day following such individual's recovery from such disability on which it is reasonably feasible, as determined under regulations which the Administrator shall prescribe, for such individual to initiate or resume pursuit of a program of education with educational assistance under this chapter.

(2)(A) A condition referred to in paragraph (1) of this subsection is an alcohol or drug dependence or abuse condition of an eligible individual in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

(i) such individual has received recognized treatment or participated in a program of rehabilitation for the condition, and

(ii) the condition is sufficiently under control to enable such individual to pursue such individual's chosen program of education under this chapter.

(B)(i) Notwithstanding the provisions of paragraph (1)(B) of this subsection, an eligible individual's application for and extension of the 10-year period for use of entitlement under this chapter because of such a condition may be granted if such individual files an application for the extension not later than one year after whichever of the following last occurs:

(I) The last date of the delimiting period otherwise applicable under this section.

(II) The termination of the last period of such treatment or such program of rehabilitation.

(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

(ii) The period of time during which, based on the existence of such a condition, such 10-year period does not run shall not exceed the lesser of—

(I) the period during which the eligible individual was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as such individual demonstrates, to the satisfaction of the Administrator, that such individual was prevented by the condition from initiating or completing such program of education, or

(II) 4 years.

(iii) When such an extension is granted, the 10-year period with respect to such individual will again begin running on whichever of the following first occurs—

(I) the first day, following the condition becoming sufficiently under control to enable such individual to pursue such individual's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with the regulations prescribed pursuant to subparagraph (A) of this paragraph, for such individual to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

(II) the day after the fourth year of the extension.

* * * * * * *

CHAPTER 31—TRAINING AND REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES

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§ 1503. Periods of eligibility

(a) * * *

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(b)(1)*(A)* In any case in which the Administrator determines that a veteran has been prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because a medical condition *(other than a condition described in subparagraph (B)(ii) of this paragraph)* of such veteran made it infeasible for such veteran to participate in such a program, the 12-year period of eligibility shall not run during the period of time that such veteran was so prevented from participating in such a program, and such period of eligibility shall again begin to run on the first day following such veteran's recovery from such condition on which it is reasonably feasible, as determined under regulations which the Administrator shall prescribe, for such veteran to participate in such a program.

* * * * * * *

(B)(i) Subject to clauses (iii) and (iv) of this subparagraph, in any case in which the Administrator determines, under regulations which the Administrator shall prescribe, that a veteran has been prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because a condition described in clause (ii) of this subparagraph made it infeasible for the veteran to participate in such a program, the 12-year period of eligibility shall not run during the period of time that the veteran was so prevented from participating in such a program.

(ii) A condition referred to in clause (i) of this subparagraph is an alcohol or drug dependence or abuse condition of a veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

(I) the veteran has received recognized treatment or has participated in a program of rehabilitation for the condition, and

(II) the condition is sufficiently under control to enable the veteran to participate in a vocational rehabilitation program under this chapter.

(iii) Clause (i) of this subparagraph applies only if the veteran has filed an application under this paragraph not later than one year after whichever of the following last occurs:

(I) The last date of the period of eligibility otherwise applicable under this section.

(II) The termination of the last period of such treatment or such program of rehabilitation.

(III) The date on which final regulations prescribed pursuant to clause (i) of this subparagraph are published in the Federal Register.

(iv) The period of time during which, pursuant to clause (i) of this subparagraph, the 12-year period of eligibility does not run shall not exceed the lesser of—

(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for a condition described in clause (ii) of this subparagraph plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by such condition from participating in a vocational rehabilitation program under this chapter, or

(II) 4 years.

(v) When pursuant to clause (i) of this subparagraph a period of eligibility does not run for a period of time, such period of eligibility shall again begin to run on whichever of the following first occurs—

(I) the first day, following such condition becoming sufficiently under control to enable the veteran to participate in such program of vocational rehabilitation, on which it is reasonably feasible, in accordance with under the regulations prescribed pursuant to clause (i) of this subparagraph, for the veteran to participate in such a program, or

(II) the period of time during which the 12-year period of eligibility has, pursuant to such clause, been stopped from running equals 4 years.

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CHAPTER 32—POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE

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SUBCHAPTER III—ENTITLEMENT; DURATION

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§ 1632. Duration; limitations

(a)(1) * * *

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(2)(A) If any eligible veteran was prevented from initiating or completing such veteran's chosen program of education during the delimiting period determined under paragraph (1) of this subsection because of a physical or mental disability which was not the result of such veteran's own willful misconduct, *or because of a condition (and under the circumstances) described in paragraph (4)(A) of this section,* such veteran shall, upon application made in accordance with subparagraph (B) of this paragraph, be granted an extension of the applicable delimiting period for such length of time *(except as provided in paragraph (4)(B) of this subsection)* as the Administrator determines, from the evidence, that such veteran was so prevented from initiating or completing such program of education.

* * * * * * *

(3) When an extension of the applicable delimiting period is granted an eligible veteran under paragraph (2) of this [subsec-

tion,] *subsection because of such disability,* the delimiting period with respect to such veteran shall again begin to run on the first day after such veteran's recovery from such disability on which it is reasonably feasible, as determined in accordance with regulations prescribed by the Administrator, for such veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter.

(4)(A) A condition referred to in paragraph (2) of this subsection is an alcohol or drug dependence or abuse condition of an eligible veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

(i) the veteran has received recognized treatment or participated in a program of rehabilitation for the condition, and

(ii) the condition is sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter.

(B)(i) Notwithstanding the provisions of paragraph (2) of this subsection, an eligible veteran may be granted an extension of the applicable delimiting period because of such a condition if the veteran files an application for such extension not later than one year after whichever of the following last occurs:

(I) The last date of the delimiting period otherwise applicable under this section.

(II) The termination of the last period of such treatment or such program of rehabilitation.

(III) The date of which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by the condition from initiating or completing such program of education, or

(II) 4 years.

(iii) When such an extension is granted, the delimiting period with respect to the veteran will again begin running on whichever of the following first occurs—

(I) the first day, following the condition becoming sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with such regulations, for the veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

(II) the day after the end of the fourth year of the extension.

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CHAPTER 34—VETERANS' EDUCATIONAL ASSISTANCE

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SUBCHAPTER IV—PAYMENTS TO ELIGIBLE VETERANS; VETERAN-STUDENT SERVICES
1681. Educational assistance allowance.
1682. Computation of educational assistance allowances.
[1682A. Accelerated payment of educational assistance allowances.]
1683. Approval of courses.
1684. Apprenticeship or other on-job training; correspondence courses.
1685. Veteran-student services.
[1686. Education loans.]
1687. [REPEALED.]

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SUBCHAPTER II—ELIGIBILITY AND ENTITLEMENT

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§ 1662. Time limitations for completing a program of education

Delimiting Period for Completion

(a)(1) No educational assistance shall be afforded an eligible veteran under this chapter beyond the date 10 years after the veteran's last discharge or release from active duty after January 31, 1955; except that, in the case of any eligible veteran who was prevented from initiating or completing such veteran's chosen program of education within such time period because of a physical or mental disability which was not the result of such veteran's own willful [misconduct,] *misconduct or because of a condition (and under the circumstances) described in paragraph (4) of this subsection,* such veteran shall, upon application made within one year after (A) the last date of the delimiting period otherwise applicable under this section, (B) the termination of the period of such mental or physical disability, or (C) October 1, 1980, whichever is the latest, be granted an extension of the applicable delimiting period for such length of time as the Administrator determines, from the evidence, that such veteran was so prevented from initiating or completing such program of education. When an extension of the applicable delimiting period is granted a veteran under the preceding [sentence,] *sentence because of such disability,* the delimiting period with respect to such veteran will again begin running on the first day following such veteran's recovery from such disability on which it is reasonably feasible, as determined in accordance with regulations which the Administrator shall prescribe, for such veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter.

* * * * * * *

(4)(A) A condition referred to in paragraph (1) of this subsection is an alcohol or drug dependence or abuse condition of a veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

(i) the veteran has received recognized treatment or participated in a program of rehabilitation for the condition, and

(ii) the condition is sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter.

(B)(i) Notwithstanding the provisions of paragraph (1) of this subsection, a veteran may be granted an extension of the applicable delimiting period because of such a condition if the veteran files an application for the extension not later than one year after whichever of the following last occurs:

(I) The last date of the delimiting period otherwise applicable under this section.

(II) The termination of the last period of such treatment or such program of rehabilitation.

(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by the condition from initiating or completing such program of education, or

(II) 4 years.

(iii) When such an extension is granted, the delimiting period with respect to the veteran will again begin running on whichever of the following first occurs—

(I) the first day, following such condition becoming sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with the regulations prescribed pursuant to subparagraph (A) of this paragraph, for the veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

(II) the day after the end of the fourth year of the extension.

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SUBCHAPTER IV—PAYMENTS TO ELIGIBLE VETERANS; VETERAN-STUDENT SERVICES

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[§ 1682A. Accelerated payment of educational assistance allowances

[(a) The Administrator, in accordance with the provisions of this section and section 1798(f) of this title and regulations which the Administrator shall prescribe under such sections, shall accelerate the payment of educational assistance allowances (hereinafter in this section referred to as "accelerated payment") to an eligible veteran who makes application and is eligible therefor and proportionally reduce the educational entitlement of such veteran under section 1661 of this title.

[(b) An eligible veteran who makes application for accelerated payment shall be eligible for such payment in connection with each school term for which such veteran applies for such accelerated payment only if—

[(1) such veteran was enrolled as a full-time student during such school term;

[(2) such veteran was entitled to an educational assistance allowance under section 1661 during such school term;

[(3) such veteran has received, after the date of enactment of this section, a loan for such school term pursuant to section 1798 of this title;

[(4) the combined amount of tuition and fees of the educational institution in which such veteran was enrolled was in excess of $700 for such school term;

[(5) the educational institution in which such veteran was enrolled has certified to the Administrator that such veteran has satisfactorily completed the program of education and attained the predetermined and identified educational, professional, or vocational objective which such veteran has been pursuing and has on such basis been awarded by such institution the appropriate educational degree, diploma, or certificate signifying such completion and attainment;

[(6) such application was filed with the Administrator within 180 days after the date (A) on which the degree, diploma, or certificate described in clause (5) of this subsection has been awarded to such veteran, or (B) on which the appropriate State or local governmental unit establishes a program described in clause (8) of this subsection, whichever date is the later;

[(7) the educational institution in which such veteran was enrolled has certified for such school term that 35 per centum or less (or such other per centum as the Administrator precribes pursuant to section 1673(d) of this title) of the total number of students enrolled in such institution (computed separately for the main campus and any branch or extension of such institution pursuant to regulations prescribed by the Administrator under section 1673(d) of this title) were students receiving educational assistance benefits under this chapter or chapter 31, 32, 35, or 36 of this title; and

[(8) the State (or local governmental unit with jurisdiction over the geographical area, or both such State and such unit) in which is located the educational institution in which such veteran was enrolled pays to the Veterans' Administration (for deposit in the Veterans' Administration Education Loan Fund established by section 1799 of this title) on such veteran's behalf an amount not more than the amount of accelerated payment which the Administrator is authorized to make on behalf of such veteran under this section, pursuant to a program established before November 24, 1982, by such State (or unit or both) to match the maximum or a lesser amount of the accelerated payment which the Administrator is authorized to make to any eligible veteran under this section, except that such State (or unit) may limit such program to veterans who are bona fide residents of such State (or unit).

[(c) Accelerated payments made under this section by the Administrator and matching amounts paid to the Administrator by a State or local governmental unit, as described in subsection (b)(8) of this section, shall constitute a collection of principal on loans made under subchapter III of chapter 36 of this title and shall be deposited in the Veterans' Administration Education Loan Fund established by section 1799 of this title. The Administrator shall promptly notify each veteran on whose behalf such a principal collection and deposit has been made of the amount by which such collection and deposit reduces the principal repayment obligation of such veteran.

[(d) In no event may the amount of accelerated payment made by the Administrator in connection with any school term exceed (1) an amount equal to the educational assistance allowance to which such veteran was otherwise entitled under section 1682 of this title for such school term, (2) an amount equal to 33⅓ per centum of the amount by which the expenses of tuition and fees are in excess of $700 for such school term, (3) an amount equal to 33⅓ per centum of the amount by which the amount of the outstanding obligation of such veteran under any loan made pursuant to section 1798 of this title is in excess of $700, or (4) the amount which the State (or local governmental unit or both) concerned pays to the Administrator to match the accelerated payment to be made by the Administrator on behalf of such veteran, whichever is the least amount.

[(e) As used in this section, the term "school term" means—

[(1) in the case of an institution of higher learning operating on a quarter system, three such consecutive quarters;

[(2) in the case of an institution of higher learning operating on a semester system, two such consecutive semesters; or

[(3) in the case of an educational institution not an institution of higher learning, or, in the case of an institution of higher learning not operating on a quarter or semester system, any time division, approved by the Administrator, of a program of education within which segments of the program are completed.]

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[§ 1686. Education loans

[Any eligible veteran to whom section 1662(a)(2) of this title is applicable shall be entitled to an education loan (if the program of education is pursued in a State) in such amount and on such terms and conditions as provided in sections 1798 and 1799 of this title.]

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CHAPTER 35—SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE

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SUBCHAPTER IV—PAYMENTS TO ELIGIBLE PERSONS

1731. Educational assistance allowance.
1732. Computation of educational assistance allowance.
1733. Special assistance for the educationally disadvantaged.
1734. Apprenticeship or other on-job training; correspondence courses.
1735. Approval of courses.
1736. Specialized vocational training courses.
[1737. Education loans.]

[1738. Accelerated payment of educational assistance allowances.]

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SUBCHAPTER II—ELIGIBILITY AND ENTITLEMENT

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§ 1712. Periods of eligibility

(a) * * *

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(b)(1) * * *

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(2) Notwithstanding the provisions of paragraph (1) of this subsection, in the case of any eligible person (as defined in section 1701(a)(1)(B), (C), or (D) of this title) who was prevented from initiating or completing such person's chosen program of education within such period because of a physical or mental disability which was not the result of such person's own willful [misconduct,] *misconduct or because of a condition (and under the circumstances) described in paragraph (4)(A) of this section,* such person shall, upon application made within one year after (A) the last date of the delimiting period otherwise applicable under this section, (B) the termination of the period of mental or physical disability, or (C) October 1, 1980, whichever is the latest, be granted an extension of the applicable delimiting period for such length of time *(except as provided in paragraph (4)(B)(ii) of this subsection)* as the Administrator determines, from the evidence, that such person was so prevented from initiating or completing such program of education. When an extension of the applicable delimiting period is granted under the exception in the preceding [sentence,] *sentence because of such disability,* the delimiting period will again begin running on the first day following such eligible person's recovery from such disability on which it is reasonably feasible, as determined in accordance with regulations which the Administrator shall prescribe, for such eligible person to initiate or resume pursuit of a program of education with educational assistance under this chapter.

* * * * * * *

(4)(A) A condition referred to in paragraph (2) of this subsection is an alcohol or drug dependence or abuse condition of an eligible person in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

(i) such person has received recognized treatment or participated in a program of rehabilitation for the condition, and

(ii) the condition is sufficiently under control to enable such person to pursue such person's chosen program of education under this chapter.

(B)(i) Notwithstanding the provisions of paragraph (2) of this subsection, an eligible person may be granted an extension of the applicable delimiting period because of such a condition if such person files an application for such extension not later than one year after whichever of the following last occurs:

(I) The last date of the delimiting period otherwise applicable under this section.

(II) The termination of the last period of such treatment or such program of rehabilitation.

(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

(I) the period during which the eligible person was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as such person demonstrates, to the satisfaction of the Administrator, that such person was prevented by the condition from initiating or completing such program of education, or

(II) 4 years.

(iii) When such an extension is granted, the delimiting period with respect to such person will again begin running on whichever of the following first occurs—

(I) the first day, following the condition becoming sufficiently under control to enable such person to pursue such person's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with the regulations prescribed pursuant to subparagraph (A) of this paragraph, for such person to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

(II) the day after the end of the fourth year of the extension.

* * * * * * *

SUBCHAPTER IV—PAYMENTS TO ELIGIBLE PERSONS

* * * * * * *

[§ 1737. Education loans

[Any eligible persons shall be entitled, before October 1, 1981, to an education loan (if the program of education is pursued in a State) in such amount and on such terms and conditions as provided in sections 1798 and 1799 of this title.]

[§ 1738. Accelerated payment of educational assistance allowances

[An eligible person shall be entitled to an accelerated payment of educational assistance allowances pursuant to the provisions of section 1682A of this title.]

* * * * * * *

CHAPTER 36—ADMINISTRATION OF EDUCATIONAL BENEFITS

* * * * * * *

SUBCHAPTER II—MISCELLANEOUS PROVISIONS

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§ 1788. Measurement of courses

(a) For the purposes of this chapter and chapters 34 and 35 of this title—

(1) * * *

* * * * * * *

Notwithstanding the provisions of clause (1) or (2) of this subsection, an educational institution offering courses not leading to a standard college degree may measure such courses on a quarter- or semester-hour basis (with full time measured on the same basis as provided by clause (4) of this subsection); but (A) the academic portions of such courses must require outside preparation and be measured on not less than one quarter or one semester hour for each fifty minutes net of instruction per week or quarter or semester; (B) the laboratory portions of such courses must be measured on not less than one quarter or one semester hour for each two hours *(or two fifty-minute periods)* of attendance per week per quarter or semester; and (C) the shop portions of such courses must be measured on not less than one quarter or one semester hour for each three hours of attendance per week per quarter or semester. In no event shall such course be considered a full-time course when less than twenty-two hours per week of attendance is required.

* * * * * * *

(c) For the purposes of subsection (a) of this section, the term "in residence on a standard quarter- or semester-hour basis" means a study at a site or campus of a college or university, or off-campus at an official resident center, requiring pursuit of regularly scheduled weekly class instruction at the rate of one standard class session per week throughout the quarter or semester for one quarter or one semester hour of credit. For the purposes of the preceding sentence, the term "standard class session" means one hour (or fifty-minute period) of academic instruction, two hours *(or two fifty-minute periods)* of laboratory instruction, or three hours of workshop training.

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§ 1793. Compliance surveys

(a) Except as provided in subsection (b) of this section, [The] *the* Administrator shall conduct an annual compliance survey of each institution offering one or more courses approved for the enrollment of eligible veterans or persons where at least 300 veterans or persons are enrolled under provisions of this title or [where] *when* the course does not lead to a standard college degree. Such compliance survey shall [assure] *be designed to ensure* that the institution and approved courses are in compliance with all applicable provisions of chapters 31, 34, 35, and 36 of this title. The Administrator shall assign at least one education compliance specialist to work on compliance surveys in any year for each 40 compliance surveys required to be made under this section.

(b) The Administrator may waive the requirement in subsection (a) of this section for an annual compliance survey with respect to an institution if such an institution has a demonstrated record of compliance with all the applicable provisions of chapters 31, 34, 35, and 36 of this title warranting a determination that the waiver would be appropriate and in the best interest of the United States Government.

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CHAPTER 39—AUTOMOBILES AND ADAPTIVE EQUIPMENT FOR CERTAIN DISABLED VETERANS AND MEMBERS OF THE ARMED FORCES

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§ 1902. Assistance for providing automobile and adaptive equipment

(a) The Administrator, under regulations which the Administrator shall prescribe, shall provide or assist in providing an automobile or other conveyance to each eligible person by paying the total purchase price of the automobile or other conveyance (including all State, local, and other taxes) or [$5,000,] *$5,530,* whichever is the lesser, to the seller from whom the eligible person is purchasing under a sales agreement between the seller and the eligible person.

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PART IV—GENERAL ADMINISTRATIVE PROVISIONS

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CHAPTER 51—APPLICATIONS, EFFECTIVE DATES, AND PAYMENTS

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SUBCHAPTER II—EFFECTIVE DATES

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§ 3013. Effective dates of educational benefits

Effective dates relating to awards under chapters 30, 31, *32,* 34, and 35 of this title shall, to the extent feasible, correspond to effective dates relating to awards of disability compensation.

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PART V—BOARDS AND DEPARTMENTS

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73. Department of Medicine and Surgery	4101
75. Veterans' Canteen Service	4201

76. Veterans' Administration Health Professional Educational Assistance Program *4301*

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CHAPTER 73—DEPARTMENT OF MEDICINE AND SURGERY

SUBCHAPTER I—ORGANIZATION; GENERAL

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4101. Functions of Department.
4102. Divisions of Department.
4103. Office of the Chief Medical Director.
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SUBCHAPTER III—PROTECTION OF PATIENT RIGHTS

4131. Informed consent.
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4133. Nondiscrimination in the admission [of alcohol and drug abusers to] *and treatment of certain individuals by* Veterans' Administration [health care] *health-care* facilities.
4134. Coordination; reports.

[SUBCHAPTER IV—VETERANS' ADMINISTRATION HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

[4141. Establishment of program; purpose; duration.
[4142. Eligibility; application; written contract.
[4143. Obligated service.
[4144. Breach of contract; liability; waiver.
[4145. Exemption of scholarship payments from taxation.
[4146. Program subject to availability of appropriations.]

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SUBCHAPTER I—ORGANIZATION; GENERAL

§ 4101. Functions of Department

(a) * * *

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(c)(1) In order to carry out more effectively the primary function of the Department of Medicine and Surgery and in order to contribute to the Nation's knowledge about disease and disability, the Administrator shall, in connection with the provision of medical care and treatment to veterans, carry out a program of medical research (including biomedical, *mental illiness,* prosthetic, and [health care services] *health-care-services* research, and stressing research into *(A)* spinal cord injuries and diseases and other disabilities that lead to paralysis of the lower [extremities).] *extremities, and (B) post-traumatic stress disorder, dementias, and other mental disorders).* In carrying out such research program, the Administrator shall act in cooperation with the entities described in subsection (b) of this section.

* * * * * * *

§ 4103. Office of the Chief Medical Director

(a) The Office of the Chief Medical Director shall consist of the following *persons, each of whom shall be qualified in the administration of health services*—

(1) The Chief Medical Director, who shall be the Chief of the Department of Medicine and Surgery and shall be directly responsible to the Administrator for the operations of the Department, and who shall be a qualified doctor of medicine, appointed by the Administrator.

(2) The Deputy Chief Medical Director, who shall be the principal assistant of the Chief Medical Director, and who shall be a qualified doctor of medicine, appointed by the Administrator upon the recommendation of the Chief Medical Director.

(3) The Associate Deputy Chief Medical Director, who shall be an assistant to the Chief Medical Director and the Deputy Chief Medical Director, and who shall be a [qualified doctor of medicine,] *person with specified qualifications,* appointed by the Administrator upon the recommendation of the Chief Medical Director.

(4) Not to exceed eight Assistant Chief Medical Directors, [who] *all of whom* shall be *persons with specified qualifications,* appointed by the Administrator upon the recommendation of the Chief Medical Director. Not more than two Assistant Chief Medical Directors may be persons [qualified in the administration of health services who are not doctors of medicine, dental surgery, or dental medicines.] *who are persons with specified qualifications solely by reason of clause (ii) of the last sentence of this subsection.* One Assistant Chief Medical Director shall be a qualified doctor of dental surgery or dental medicine who shall be directly responsible to the Chief Medical Director for the operation of the Dental Service. One Assistant Chief Medical Director shall be a [qualified physician] *person with specified qualifications* trained in, or having suitable extensive experience in, geriatrics who shall be responsible to the Chief Medical Director for evaluating all research, educational, and clinical health-care programs carried out in the Department in the field of geriatrics and who shall serve as the principal advisor to the Chief Medical Director with respect to such programs.

(5) Such Medical [Directors] *Directors, all of whom shall be persons with specified qualifications,* as may be appointed by the [Administrator,] *Administrator* upon the recommenda-

tion of the Chief Medical [Director,] *Director* to suit the needs of the Department. [A Medical Director shall be either a qualified doctor of medicine or a qualified doctor of dental surgery or dental medicine.]

(6) A Director of Nursing Service, who shall be a qualified registered nurse, appointed by the Administrator, *upon the recommendation of the Chief Medical Director* and who shall be responsible to the Chief Medical Director for the operation of the Nursing Service.

(7) A Director of Pharmacy Service, a Director of Dietetic Service, a Director of Podiatric Service, and a Director of Optometric Service, *each of whom shall be licensed in the appropriate service field* appointed by the Administrator, *upon the recommendation of the Chief Medical Director* and who shall be responsible to the Chief Medical Director for the operation of their respective Services.

(8) Such directors of hospitals, domiciliary facilities, medical centers, and outpatient facilities as may be appointed by the Administrator upon the recommendation of the Chief Medical Director.

(9) Such other personnel as may be authorized by this chapter.

For the purpose of this subsection, the term "person with specified qualifications" means (i) a person meeting the requirements set forth in clause (1), (2), (3), (5), (6), (7), or (8) of subsection (a) of section 4105 of this title, or (ii) a person who meets or has met the requirements set forth in clause (4) of such subsection.

(b) Except as provided in subsection (c) of this section—

(1) any appointment under this section shall be for a period of four years, with reappointment permissible for successive like periods,

(2) any such appointment or reappointment may be extended by the Administrator for a period not in excess of three years, and

(3) any person so appointed or [reappointed] *reappointed,* or whose appointment or [reappointment,] *reappointment* is [extended] *extended,* shall be subject to removal by the Administrator for cause.

* * * * * * *

§ 4104. Additional appointments

There shall be appointed by the Adminstrator additional personnel as the Administrator may find necessary for the medical care of veterans, as follows:

(1) Physicians, dentists, podiatrists, optometrists, nurses, physician assistants, and expanded-function dental auxiliaries;

(2) [Pharmacists, psychologists (other than those described in paragraph (3)), occupational therapists,] *Psychologists (other than those described in paragraph (3) of this section)* dietitians, and other scientific and professional personnel, such as microbiologists, chemists, biostatisticians, and medical and dental technologists; and

(3) Clinical or counseling psychologists who hold diplomas as diplomates in psychology from an accrediting authority approved by the Administrator, certified or registered respiratory therapists, licensed physical therapists **[**and**]** licensed practical or vocational **[**nurses.**]** *nurses, pharmacists, and occupational therapists.*

* * * * * * *

§ 4106. Period of appointments; promotions

(a) * * *

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(g)(1) * * *

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(3) Notwithstanding any other provision of this title or other federal law, all matters relating to adverse actions, disciplinary actions, and grievance procedures involving individuals appointed to such positions shall be addressed under the provisions of title 5 as though such individuals had been appointed under such title.

§ 4107. Grades and pay scales

(a) * * *

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(d) Notwithstanding any other provision of law, and except as provided in **[**section**]** *sections* 4118 *and 4120* of this title, pay may not be paid at a rate in excess of the rate of basic pay for an appropriate level authorized by section 5314, 5315, or 5316 of title 5 for positions in the Executive Schedule, as follows:

(1) Level III for the Chief Medical Director;

(2) Level IV for the Deputy Chief Medical Director; and

(3) Level V for all other positions for which such basic pay is paid under this section.

(e)(1) * * *

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(3) A nurse performing service on a tour of duty, any part of which is within the period commencing at midnight **[**Saturday**]** *Friday* and ending at midnight Sunday, shall receive additional pay for each hour of service on such tour at a rate equal to 25 percent of such nurse's hourly rate of basic pay.

* * * * * * *

(10)(A) Notwithstanding any other provision of law but subject to subparagraphs (B) and (C) of this paragraph, if the Administrator determines it to be necessary in order to obtain or retain the services of nurses, the **[**Administrator—**]** *Administrator may increase the rates of additional pay authorized under paragraphs (2) through (8) of this subsection.*

[(i) may increase the rates of additional pay authorized under paragraphs (2) through (8) of this subsection; and

[(ii) may extend the period for which additional pay authorized under paragraph (3) of this subsection is paid to include part or all of a tour of duty any part of which is within the period commencing at midnight Friday and ending at midnight Saturday.**]**

(B) An increase under subparagraph (A)**[**(i)**]** of this paragraph in rates of additional pay (i) may be made at any specific Veterans' Administration health-care facility in order to provide nurses, or any category of nurses, at such facility additional pay in an amount competitive with, but not exceeding, the amount of the same type of pay that is paid to the same category of nurses at non-Federal health-care facilities in the same geographic area as such Veterans' Administration health-care facility (based upon a reasonably representative sampling of such non-Federal facilities), and (ii) may be made on a nationwide, local, or other geographic basis if the Administrator finds that such an increase is justified on the basis of a review of the need for such increase (based upon a reasonably representative sampling of non-Federal health-care facilities in the geographic area involved).

[(C)(i) An extension under subparagraph (A)(ii) of this paragraph of the period for which additional pay may be paid under paragraph (3) of this subsection may be made on a nationwide, local, or other geographic basis. Any such extension shall be based on a determination by the Administrator that such extension is justified on the basis of a review of the need for such extension in such geographic area.

[(ii) The rates of additional pay payable pursuant to an extension under such subparagraph shall be established as a percentage of the applicable hourly rates of basic pay. Such rates of additional pay may not exceed the lesser of (I) the percentage of such hourly rates of basic pay that the Administrator determines is necessary to be paid within the geographic area involved in order to obtain or retain the services of nurses, and (II) the percentage provided for in paragraph (3) of this subsection of the applicable hourly rate of basic pay.**]**

(f) Physician assistants and expanded-function dental auxiliaries shall be compensated by use of Nurse Schedule grade titles and related pay ranges and shall be entitled to additional pay on the same basis as provided for nurses in subsection (e) of this section. Notwithstanding any other provision of law, when the Administrator determines it to be necessary in order to obtain or retain the services of certified or registered respiratory therapists, licensed physical therapists, **[**or**]** licensed practical or vocational nurses, *pharmacists, or occupational therapists,* the Administrator may, on a nationwide, local, or other geographic basis, pay persons employed in such positions additional pay on the same basis as provided for nurses in subsection (e) of this section. The Administrator shall prescribe by regulation standards for compensation and payment under this subsection.

* * * * * * *

(j)(1) Notwithstanding any other provision of law, an individual—

(A) who (i) is employed in a position listed in paragraph (3) of section 4104 of this title, or (ii) meets the criteria specified in subclauses (i), (ii), and (iii) of subsection (g)(1)(B) of this section, and

(B) who is employed in a work unit for which on-call premium pay is authorized, and

(C) who is officially scheduled to be on call outside such individual's regular hours or on a holiday designated by Federal statute or Executive order,

may be paid at the rate provided in subsection (e)(8) of this section except for such time as such individual may be called back to work.

(2) Notwithstanding the provisions of paragraph (1) of this subsection with respect to the rate of on-call premium pay, an individual who is scheduled to be on call pursuant to such paragraph and who was receiving standby premium pay pursuant to section 5545 of title 5 on the date of the enactment of this subsection, shall, as long as such employee is employed in the same position and work unit and remains eligible for such standby pay, receive pay equal to the greater of (A) the amount of pay which such employee would receive if being paid the rate of standby pay pursuant to such section that such individual would be entitled to receive if such individual were not scheduled to be on call instead, or (B) the amount of pay which such employee is entitled to receive including on-call premium pay described in such paragraph.

* * * * * * *

§ 4110. Disciplinary boards

(a) The Chief Medical Director, under regulations prescribed by the Administrator shall from time to time appoint boards to be known as disciplinary boards, each such board to consist of not less than three nor more than five employees, senior in grade, of the Department of Medicine and Surgery, to determine, upon notice and fair hearing, charges [of inaptitude, inefficiency, or misconduct] *in disciplinary actions for performance or conduct during tenure with the Veterans' Administration, except with respect to matters described in subsection (f) of this section,* of any person employed in a position provided in paragraph (1) of section 4104 of this title. The majority of employees on a disciplinary board shall be employed in the same category of position as the employee who is the subject of the charges. *The Chief Medical Director may delegate the function of appointing a board to an employee of the Department of Medicine and Surgery who is not involved in deciding whether or not to file charges against the employee and who is not subordinate to any official involved in so deciding.*

* * * * * * *

(d) A disciplinary board, when in its judgment charges are sustained, shall recommend to the Administrator [suitable] *that the proposed* disciplinary [action,] *action be sustained or modified* within limitations prescribed by the [**Administrator, which shall include reprimand, suspension without pay, reduction in grade, and discharge from the Department of Medicine and Surgery of such person. The Administrator shall either approve the recommendation of the board, approve such recommendation with modification or exception, approve such recommendation and suspend further action at the time, or disapprove such recommendation. The Administrator shall cause to be executed such action as the Adminis-**

trator approves. The decision of the Administrator shall be final.] *Administrator.*

* * * * * * *

(f)(1) An employee against whom disciplinary action (on any grounds other than grounds involving questions of clinical competence in matters involving direct patient-care activities) consisting of a suspension for 14 days or less, reassignment or reduction in rank without a reduction in basic pay, reprimand, or admonishment is proposed is entitled to—

(A) an advance written notice stating the specific reasons for the proposed action;

(B) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(C) be represented by an attorney or other representative; and

(D) a written decision and the specific reasons therefor at the earliest practicable date.

(2) Actions taken under paragraph (1) of this subsection shall be subject to review, at the discretion of the employee, under either the provisions of section 4120A of this title or an agency reveiw procedure to be established by the Administrator, but not under both. Any such agency review procedure established by the Administrator shall include—

(A) an informal review of the decision on the disciplinary action by an official of a higher level than the official who made the decision;

(B) a prompt by such higher level official decision and a right to formal review by an impartial examiner within the agency;

(C) a prompt report of the findings and recommendations by the impartial examiner; and

(D) a prompt review of the examiner's findings and recommendations, together with any comments by the employee and the agency on such findings and recommendations, by an official of a higher level than the official who conducted the review pursuant to clause (A) of this paragraph.

* * * * * * *

§ 4112. Special medical advisory group and other advisory bodies

(a) * * *

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(c) The Administrator shall require that the Chief, Nursing Service, or the designee of the Chief, at each Veterans' Administration health-care facility be included in the membership of each policy-making and fiscal committee at each such facility, including, but not limited to (1) committees relating to (A) budget, (B) education, (C) position management, (D) clinical executive issues, (E) planning, and (F) resource allocation, and (2) the deans committee or other advisory committee established pursuant to subsection (b) of this section.

* * * * * * *

§ 4114. Temporary full-time, part-time, and without compensation appointments; residencies or internships

(a)(1) * * *

* * * * * * *

(d)*(1) Subject to paragraph (2) of this subsection,* [The] *the* Chief Medical Director may waive for the purpose of [appointments] *the appointment of an individual* under this section the requirements [of] *set forth in* section 4105(a) of this title [that the licensure of a physician, dentist, podiatrist, psychologist, or optometrist, or the registration of a nurse must be in a "State", if]—

[(1) in the case of a physician, dentist, podiatrist, psychologist, or optometrist, the person is to be used on a research or an academic post or where there is no direct responsibility for the care of patients; or

[(2) in any case, where the person is to serve in a country other than the United States and such person's licensure or registration is in the country in which the person is to serve.]

(A) that a physician, dentist, psychologist, optometrist, registered nurse, practical or vocational nurse, or physical therapist be licensed or certified, as appropriate;

(B) that the licensure or certification of such an individual be in a State; and

(C) that a psychologist have completed an internship.

(2) The waivers authorized in paragraph (1) of this subsection may be granted—

(A) in the case of clauses (A) and (C) of such paragraph, if the individual will (i) be employed to conduct research or serve in an academic position, and (ii) have no responsibility for furnishing direct patient care services; and

(B) in the case of clause (B) of such paragraph, if the individual will be employed to serve in a country other than the United States and the individual's licensure or registration is in the country in which the individual is to serve.

* * * * * * *

§ 4116. Defense of certain malpractice and negligence suits

(a) * * *

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(f) The exception provided in section 2680(h) of title 28 shall not apply to any claim arising out of a negligent or wrongful act or omission of any person described in subsection (a) of this section in furnishing medical care or treatment (including medical care or treatment furnished in the course of a clinical study or investigation) while in the exercise of such person's duties in or for the Department of Medicine and Surgery.

* * * * * * *

§ 4120. Recruitment and retention bonus pay for certain health-care personnel

(a) Notwithstanding any other provision of law, in order to recruit and retain the services of personnel in a category described in clause

(A) or (B) of section 4107(g)(1) of this title when the Administrator determines upon the recommendation of the Chief Medical Director, that there is a critical shortage of such personnel in the Department of Medicine and Surgery, the Administrator may pay a bonus to any such personnel as provided in this section and in regulations prescribed by the Administrator under subsection (i) of this section.

(b) The bonus which may be paid under this section may not exceed $20,000, and may be paid only to an individual who executes a written agreement with the Administrator—

(1) to be or to continue to be employed on a full-time basis in the Department of Medicine and Surgery for a specified period of service not less than 4 years; and

(2) to serve during that period in a specific geographic location or a professional capacity with respect to which the Administrator has determined under subsection (f) of this section there are significant recruitment and retention problems.

(c) A bonus may not be paid under this section (1) to any individual who is obligated to serve in the Veterans' Administration for a period of employment until such time as such individual completes such period of employment in accordance with any terms or conditions which such individual was obligated to satisfy, and (2) unless all personnel serving in the same professional capacity in the recruitment area for that category of employment are offered the opportunity to receive such a bonus under the same terms and conditions.

(d)(1) Except as provided in paragraph (2) of this subsection, a bonus under this section shall be paid in equal installments after each year of service is completed throughout the period of obligated service specified in the agreement described in subsection (b) of this section.

(2)(A) The Administrator may make a payment in an amount not in excess of 25 percent of the total bonus in a lump sum at the time that the period of obligated service commence under an agreement described in subsection (b) of this section.

(B) In the event that the Administrator makes a payment under subparagraph (A) of this paragraph, the remaining balance of the bonus shall be paid in equal installments after each year of service is completed throughout the period of obligated service specified in the agreement described in subsection (b) of this section.

(e)(1) A bonus paid to any individual under this section shall be in addition to any pay or allowance to which such individual is entitled.

(2) The amount of any bonus paid under this section shall not be considered as basic pay for the purposes of sections 551, 552, and 5595 of title 5, chapters 81, 83, 84, and 87 of such title, or any other provision of law creating an entitlement to benefits based on basic pay.

(f) At least once each year the Administrator, upon the recommendation of the Chief Medical Director, shall determine the specific geographic locations and professional specialties, if any, as to which there are significant recruitment and retention problems in the personnel categories described in subsection (a) of this section. Upon making any such determination, the Administrator shall promptly notify the Committee on Veterans' Affairs of the Senate and the

House of Representatives of the determination and the basis therefor.

(g)(1) Any individual who receives a lump-sum bonus payment under subsection (d)(2) of this section and who voluntarily, or because of misconduct, fails to perform services as assigned by the Administrator for the first year of the period of obligated service provided in the agreement shall refund to the United States Treasury the amount of such lump-sum bonus payment, unless the Administrator determines, in accordance with regulations prescribed under subsection (i) of this section, that such failure is necessitated by circumstances beyond the control of such individual.

(2) An obligation to refund any portion of a bonus payment under this subsection is, for all purposes, a debt owed to the United States.

(h) The Administrator shall prescribe regulations to carry out this section.

(i) For the purposes of this section, the term "recruitment area" means, with respect to persons in a health-care profession, a geographic area in which a health-care facility located in such area generally competes with all other health-care facilities located in such area in the recruitment of employees in that profession.

§ 4120A. Grievances and certain disciplinary reviews

(a) For the purpose of resolving (1) grievances of employees appointed under authority of this title who are members of a bargaining unit recognized under chapter 71 of title 5, or (2) disciplinary actions as described in subsection 4110(f)(1) of this title involving such employees, the Administrator shall authorize review of agency actions on grievances or disciplinary actions under the procedures negotiated under the authority of chapter 71 of title 5.

(b) For the purpose of resolving (1) grievances of supervisors and employees appointed under authority of this chapter who are not members of a bargaining unit recognized under chapter 71 of title 5, or (2) disciplinary actions as described in subsection 4110(f)(1) of this title involving such employees, the Administrator shall, at the request of the employee, authorize review of agency action on such grievances or disciplinary action pursuant to the procedures negotiated for such purposes under the authority of such chapter 71 for the Veterans' Administration facility with respect to which the grievance is filed or at which the disciplinary action is taken. In the case of a facility at which there is no negotiated procedure in effect, the Administrator, for purposes of this subsection, shall utilize the procedure negotiated with the national labor organization having the largest membership of Veterans' Administration employees. In the case of an employee who is not a bargaining unit member and who appeals under this subsection, such employee may have representation of his or her choosing, not provided by a union, during such review and the employee and the agency each shall bear half the expense of any arbitration.

(c) For the purposes of this section, the term "grievance" means a matter of concern by an employee appointed under this title (as may be negotiated under authority of chapter 71 of title 5) with respect to

his or her employment but does not include matters similar to those excluded from grievance procedures under chapter 71 of title 5.

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SUBCHAPTER III—PROTECTION OF PATIENT RIGHTS

* * * * * * *

§ 4132. Confidentiality of certain medical records

(a) Records of the identity, diagnosis, prognosis, or treatment of any patient or subject which are maintained in connection with the performance of any program or activity (including education, training, treatment, rehabilitation, or research) relating to drug abuse, alcoholism or alcohol abuse, *infection with the human immunodeficiency virus,* or sickle cell anemia which is carried out by or for the Veterans' Administration under this title shall, except as provided in subsection (e) of this section, be confidential, and (section 3301 of this title to the contrary notwithstanding) such records may be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b)(1) The content of any record referred to in subsection (a) of this section may be disclosed by the Administrator in accordance with the prior written consent of the patient or subject with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed in regulations prescribed by the [Administrator pursuant to section 4134 of this title.] *Administrator.*

(2) Whether or not any patient or subject, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives written consent, the content of such record may be disclosed by the Administrator as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient or subject in any report of such research, audit, or evaluation, or otherwise disclose patient or subject identities in any manner.

(C) In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the human immunodeficiency virus, to a Federal, State, or local government agency or instrumentality charged under Federal or State law with the protection of the public health or safety and to which such Federal or State law requires disclosure of such record if a qualified representative of such agency or instrumentality has made a written request that such record be provided as required pursuant to such law for a purpose authorized by Federal or State law.

[(C)] *(D)* If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

* * * * * * *

(c) Except as authorized by a court order granted under subsection (b)(2)[(C)]*(D)* of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against, or to conduct any investigation of, a patient or subject.

* * * * * * *

(e)*(1)* The prohibitions of this section shall not prevent any interchange of records—

[(1)]*(A)* within and among those components of the Veterans' Administration furnishing health care to veterans, or determining eligibility for benefits under this title; or

[(2)]*(B)* between such components furnishing health care to veterans and the Armed Forces.

(2) The provisions of this section shall not prohibit any disclosure of information or records relating to any patient's or subject's infection with the human immunodeficiency virus that is required or authorized by a law having general applicability to federal health-care services programs.

* * * * * * *

§ 4133. Nondiscrimination in the admission [of alcohol and drug abusers to] ***and treatment of certain individuals by*** Veterans' Administration [health care] ***health-care*** facilities

Veterans eligible for treatment under chapter 17 of this title who are alcohol or drug abusers [and who are suffering from medical disabilities] *or are infected with the human immunodeficiency virus* shall not be discriminated against in admission or [treatment, solely because of their alcohol or drug abuse or dependence,] *treatment* by any Veterans' Administration [health care facility.] *health-care facility solely because of their alcohol or drug abuse or dependency or because of their viral infection.* The [Administrator, pursuant to the provisions of section 4134 of this title,] *Administrator* shall prescribe regulations for the enforcement of [this] *the* nondiscrimination policy *established by this section. Such regulations,* with respect to the admission and treatment of [such eligible veterans who are] alcohol or drug [abusers.] *abusers, shall be prescribed in accordance with the provisions of section 3134 of this title.*

§ 4134. Coordination; reports

(a) Regulations prescribed pursuant to section 4131 of this title, section 4132 of this title with respect to the confidentiality of alcohol and drug abuse medical records, and section 4133 of this [title,] *title with respect to alcohol and drug abusers,* shall, to the maximum extent feasible consistent with other provisions of this title, make applicable the regulations governing—

(1) human experimentation and informed consent prescribed by the Secretary of Health and Human Services, based on the recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, established by section 201 of the National Research Act, as amended (Public Law 93-348; 88 Stat. 348), and

(2)(A) the confidentiality of drug and alcohol abuse medical records, and (B) the admission of drug and alcohol abusers to private and public hospitals, prescribed pursuant to the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended (42 U.S.C. 4551 et seq.), and the Drug Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1101 et seq.),

to the conduct of research and to the provision of hospital care, nursing home care, domiciliary care, and medical services under this title. Such regulations may contain such definitions, and may provide for such safeguards and procedures (including procedures and criteria for the issuance and scope of court orders under section 4132(b)(2)(C) of this title) as are necessary to prevent circumvention or evasion thereof, or to facilitate compliance therewith. In prescribing and implementing regulations pursuant to this subsection, the Administrator shall, from time to time, consult with the Secretary of Health and Human Services, and, as appropriate, the President (or the delegate of the President), in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they and the Administrator prescribe.

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[SUBCHAPTER IV—VETERANS' ADMINISTRATION HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

[§ 4141. Establishment of program; purpose; duration

[(a) There is hereby established a program to be known as the Veterans' Administration Health Professional Scholarship Program (hereinafter in this subchapter referred to as the "Scholarship Program"). The purpose of the Scholarship Program is to assist in providing an adequate supply of trained physicians and nurses for the Veterans' Administration and for the Nation and, if needed by the Veterans' Administration, other health-care professionals appointed under subchapter I of this chapter.

[(b) The Administrator may not furnish scholarships to new participants in the Scholarship Program after the last day of the tenth fiscal year beginning after the first such scholarship is approved by the Administrator.

[§ 4142. Eligibility; application; written contract

[(a) To be eligible to participate in the Scholarship Program, an individual must—

[(1) be accepted for enrollment, or be enrolled, as a student (A) in an accredited (as determined by the Administrator) educational institution in a State, and (B) in a course of training offered by such institution and approved by the Administrator, leading to a degree in medicine, osteopathy, dentistry, podiatry, optometry, or nursing or a course of training to become a physician assistant or expanded-function dental auxiliary;

[(2) submit an application to the Administrator for participation in the Scholarship Program;

[(3) sign and submit to the Administrator, at the time of submission of such application, a written contract (described in subsection (e) of this section) to accept payment of a scholarship and to serve a period of obligated service as provided in section 4143 of this title; and

[(4) at the time of submission of such application, not be obligated under any other Federal program to perform service after completion of the course of study or program of such individual referred to in clause (1) of this subsection.

To be accepted as a participant in the Scholarship Program, an individual must be accepted for enrollment or be enrolled (as described in clause (1) of this subsection) as a full-time student, except that an individual who is a Veterans' Administration employee described in subsection (g)(1) of this section may be accepted as a participant if accepted for enrollment or enrolled (as described in clause (1) of this subsection) for study on less than a full-time but not less than a half-time basis. (Such a participant is hereinafter in this subchapter referred to as a "part-time student".)

[(b)(1) In distributing application forms and contract forms to individuals desiring to participate in the Scholarship Program, the Administrator shall include with such forms—

[(A) a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Administrator, including in the summary a clear explanation of the damages to which the United States is entitled under section 4144 of this title if the individual breaches the contract; and

[(B) a full description of the terms and conditions that would apply to the individual's participation in the Scholarship Program and service in the Department of Medicine and Surgery.

[(2) The Administrator shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Scholarship Program on a date sufficiently early to allow such individuals adequate time to prepare and submit such forms.

[(c)(1) In selecting applicants for acceptance in the Scholarship Program, the Administrator shall give priority to the applications of individuals who have previously received scholarships under the Scholarship Program.

[(2) Before awarding the initial scholarship in any course of training other than in medicine or nursing, the Administrator, not less than 60 days before awarding such scholarship, shall notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the Administrator's intent to award a scholarship in such course of training and of the reasons why the award of scholarships in such course of training is necessary to assist in providing for the Veterans' Administration an adequate supply of personnel in the health profession concerned.

[(d)(1) An individual becomes a participant in the Scholarship Program only upon the Administrator's approval of the individual's application submitted under subsection (a)(2) of this section and the Administrator's acceptance of the contract signed by the individual under subsection (a)(3) of this section.

[(2) The Administrator shall provide written notice to an individual promptly upon the Administrator's approval under paragraph (1) of this subsection of the individual's participation in the Scholarship Program.

[(e) The written contract (referred to in this subchapter) between the Administrator and a participant in the Scholarship Program shall contain—

[(1) an agreement that—

[(A) subject to clause (2) of this subsection, the Administrator agrees (i) to provide the participant with a scholarship (described in subsection (f) of this section) for from one to four school years (or in a case in which an extension is granted under subsection (g)(3) of this section, the number of school years provided for as a result of such extension) during which period the participant is pursuing a course of training described in subsection (a)(1)(B) of this section, and (ii) to afford the participant the opportunity for employment in the Department of Medicine and Surgery (subject to the availability of appropriated funds for such purpose and other qualifications established in accordance with section 4105 of this title); and

[(B) subject to clause (2) of this subsection, the participant agrees—

[(i) to accept such a scholarship;

[(ii) to maintain enrollment and attendance in a course of training described in subsection (a)(1)(B) of this section until the participant completes the course of training;

[(iii) while enrolled in such course of training, to maintain an acceptable level of academic standing (as determined by the educational institution offering such course of training under regulations prescribed by the Administrator);

[(iv) to serve as a full-time employee in the Department of Medicine and Surgery for a period of time (hereinafter in this subchapter referred to as the "period of obligated service") equal to the greater of—

[(I) one calendar year for each school year for which the participant was provided a scholarship under the Scholarship Program (or, in the case of a participant who is a part-time student, six months for each calendar year, or part of a calendar year, for which the participant was provided a scholarship, with a academic semester or quarter to be counted in only one calendar year), or

[(II) two calendar years (or, in the case of a participant who is a part-time student, one calendar year);

[(v) if the participant's period of obligated service is deferred under section 4143(b)(3)(A) of this title, to serve any additional period of obligated service prescribed by the Administrator under section 4143(b)(4)(B) of this title; and

[(vi) in the case of a participant who is a part-time student, to maintain employment, while enrolled in such course of training, as a Veterans' Administration employee permanently assigned to a Veterans' Administration health-care facility;

[(2) a provision that any financial obligation of the United States arising out of a contract entered into under this subchapter, and any obligation of the participant which is conditioned thereon, is contingent upon funds being appropriated for scholarships under this subchapter;

[(3) a statement of the damages to which the United States is entitled under section 4144 of this title for the participant's breach of the contract; and

[(4) such other statements of the rights and liabilities of the Administrator and of the participant as may be appropriate and consistent with the provisions of this subchapter.

[(f)(1) A scholarship provided to a participant in the Scholarship Program for a school year under a written contract under the Scholarship Program shall consist of—

[(A) payment to, or (in accordance with paragraph (2) of this subsection) on behalf of, the participant of the amount of—

[(i) the tuition of the participant in such school year; and

[(ii) other reasonable educational expenses, including fees, books, and laboratory expenses; and

[(B) payment to the participant of a stipend of not in excess of $485 per month (adjusted in accordance with paragraph (3) of this subsection) for each of the 12 consecutive months beginning with the first month of such school year, except that a stipend may not be paid to a participant who is a full-time employee of the Veterans' Administration and the stipend of a participant who is a part-time student shall be adjusted as provided in subsection (g)(2) of this section.

[(2) The Administrator may contract with an educational institution in which a participant in the Scholarship Program is enrolled for the payment to the educational institution of the amounts of tuition and other reasonable educational expenses described in paragraph (1)(A) of this subsection. Payment to such an educational institution may be made without regard to subsections (a) and (b) of section 3324 of title 31.

[(3) The maximum amount of the monthly stipend, specified in paragraph (1)(B) of this subsection and as previously adjusted (if at all) in accordance with this paragraph, shall be increased by the Administrator for each school year ending in a fiscal year beginning after September 30, 1980, by an amount (rounded to the next highest multiple of $1) equal to the amount of such stipend multiplied by the overall percentage (as set forth in the report transmitted to the Congress under section 5305 of title 5) of the adjustment (if such adjustment is an increase) in the rates of pay under the

General Schedule made effective in the fiscal year in which such school year ends.

[(g)(1) To be accepted as a participant as a part-time student, an individual must be a full-time Veterans' Administration employee permanently assigned to a Veterans' Administration health-care facility on the date on which such individual submits the application referred to in subsection (a)(2) of this section and on the date on which such individual becomes a participant in the Scholarship Program.

[(2) If a participant in the Scholarship Program is awarded a scholarship as a part-time student—

[(A) the maximum amount of the stipend payable to such participant under subsection (f)(1)(B) of this section shall be reduced in accordance with the proportion that the number of credit hours carried by such participant bears to the number of credit hours required to be carried by a full-time student in the course of training being pursued by the participant; and

[(B) a stipend may not be paid to such participant under such subsection for any month during which such participant is not actually attending the course of training in which such participant is enrolled.

[(3) In the case of a participant who is a part-time student, the Administrator may extend the scholarship award period to a maximum of six school years if the Administrator determines that such an extension would be in the best interest of the United States.

[(h) Notwithstanding any other provision of law, participants in the Scholarship Program shall not by virtue of their participation in such program (1) be considered to be employees of the Federal Government, or (2) be counted against any personnel ceiling affecting the Department of Medicine and Surgery.

[(i) The Administrator shall report to Congress not later than March 1 of each year—

[(1) the number of students receiving scholarships under the Scholarship Program and the number of students enrolled in each type of health profession training;

[(2) the educational institutions providing such training;

[(3) the number of applications filed, by health profession category, under this section during the school year beginning in such year and the total number of such applications so filed for all years in which the Scholarship Program has been in existence;

[(4) the number of scholarships accepted, by health profession category, during such school year and the number, by health profession category, which were offered and not accepted; and

[(5) the amount of tuition and other expenses paid, by health profession category, in the aggregate and at each educational institution for the school year beginning in such year and for prior school years.

[(j) The Administrator shall prescribe regulations to carry out the Scholarship Program.

[§ 4143. Obligated service

[(a) Each participant in the Scholarship Program shall provide service in the full-time clinical practice of such participant's profession or in another health-care position, in an assignment or location as determined by the Administrator, as a full-time employee of the Veterans' Administration for the period of obligated service provided in the contract of such participant entered into under section 4142 of this title.

[(b)(1) Not later than 60 days prior to the date described in paragraph (3) of this subsection with respect to a participant in the Scholarship Program who is a full-time student or the date described in paragraph (5) of this subsection with respect to a participant who is a part-time student, the Administrator shall notify the participant of the date described in such paragraph for the beginning of such participant's period of obligated service.

[(2) As soon as possible after the applicable date described in paragraph (3) of this subsection or provided for under paragraph (5) of this subsection, the Administrator shall—

[(A) in the case of a participant who is not a full-time employee in the Department of Medicine and Surgery, appoint such participant as such an employee; and

[(B) in the case of a participant who is such an employee but is not serving in a position for which such participant's course of training prepared such participant, assign such participant to such a position.

[(3)(A)(i) With respect to a participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, the date for the beginning of the participant's period of obligated service is the date upon which the participant becomes licensed to practice medicine, osteopathy, dentistry, optometry, or podiatry, as the case may be, in a State, except that the Administrator may, at the request of such participant, defer such date until the end of the period of time required for the participant to complete an internship or residency or other advanced clinical training. If the participant requests such a deferral, the Administrator shall notify the participant that such deferral could lead to an additional period of obligated service in accordance with paragraph (4) of this subsection.

[(ii) No such period of internship or residency or other advanced clinical training shall be counted toward satisfying a period of obligated service under this subchapter.

[(B) With respect to a participant receiving a degree from a school of nursing, the date for the beginning of the participant's period of obligated service is the later of (i) the date upon which the participant completes such participant's course of training, or (ii) the date upon which the participant becomes registered as a graduate nurse in a State.

[(C) With respect to a participant receiving a degree from an institution other than a school of medicine, osteopathy, dentistry, optometry, podiatry, or nursing, the date for the beginning of the participant's period of obligated service is the date upon which the participant completes the course of training leading to such degree.

[(4) Any participant whose period of obligated service is deferred under paragraph (3)(A) of this subsection—

[(A) shall be required to undertake internship or residency or other advanced clinical training in an accredited program in an educational institution which is an affiliated institution (as defined in section 4108(c)(1) of this title) and with respect to which the affiliation agreement provides that all or part of the internship or residency or other advanced clinical training will be undertaken in a Veterans' Administration health-care facility; and

[(B) may, at the discretion of the Administrator and upon the recommendation of the Chief Medical Director, incur an additional period of obligated service—

[(i) at the rate of one-half of a calendar year for each year of internship or residency or other advanced clinical training (or a proportionate ratio thereof), if the internship, residency, or advanced clinical training is in a medical specialty necessary to meet the health care requirements of the Veterans' Administration (as determined under regulations prescribed by the Administrator); or

[(ii) at the rate of three-quarters of a calendar year for each year of internship or residency or other advanced clinical training (or a proportionate ratio thereof), if the internship, residency, or advanced clinical training is not in a medical specialty necessary to meet the health care requirements of the Veterans' Administration (as determined under regulations prescribed by the Administrator).

[(5) The Administrator shall by regulation prescribe the date for the beginning of the period of obligated service of a participant who was a part-time student. Such regulations shall prescribe terms as similar as practicable to the terms set forth in paragraph (3) of this subsection.

[(c)(1) Except as provided in paragraph (2) of this subsection, a participant in the Scholarship Program shall be considered to have begun serving such participant's period of obligated service—

[(A) on the date, after such participant's course completion date, on which such participant (in accordance with subsection (a) of this section) is appointed under this chapter as a full-time employee in the Department of Medicine and Surgery; or

[(B) if the participant is a full-time employee in the Department of Medicine and Surgery on such course completion date, on the date thereafter on which such participant is assigned to a position for which such participant's course of training prepared such participant.

[(2) A participant in the Scholarship Program who on such participant's course completion date is a full-time employee in the Department of Medicine and Surgery serving in a capacity for which such participant's course of training prepared such participant shall be considered to have begun serving such participant's period of obligated service on such course completion date.

[(3) For the purposes of this subsection, the term "course completion date" means the date on which a participant in the Scholarship Program completes such participant's course of training under the program.

[§ 4144. Breach of contract; liability; waiver

[(a) A participant in the Scholarship Program (other than a participant described in subsection (b) of this section) who fails to accept payment, or instructs the educational institution in which the participant is enrolled not to accept payment, in whole or in part, of a scholarship under the contract entered into under section 4142 of this title, shall, in addition to any period of obligated service or other obligation or liability under the contract, be liable to the United States for the amount of $1,500 as liquidated damages.

[(b) A participant in the Scholarship Program who—

[(1) fails to maintain an acceptable level of academic standing in the educational institution in which the participant is enrolled (such level determined by the educational institution under regulations prescribed by the Administrator),

[(2) is dismissed from such educational institution for disciplinary reasons,

[(3) voluntarily terminates the course of training in such educational institution before the completion of such course of training,

[(4) fails to become licensed to practice medicine, osteopathy, dentistry, podiatry, or optometry in a State, fails to become registered as a graduate nurse in a State, or fails to meet any applicable licensure requirement in the case of a physician assistant or expanded-function dental auxiliary, during a period of time determined under regulations prescribed by the Administrator, or

[(5) in the case of a participant who is a part-time student, fails to maintain employment, while enrolled in the course of training being pursued by such participant, as a Veterans' Administration employee permanently assigned to a Veterans' Administration health-care facility,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to or on behalf of the participant under the contract.

[(c) If a participant in the Scholarship Program breaches the written contract by failing (for any reason) to complete such participant's period of obligated service, the United States shall be entitled to recover from the participant an amount determined in accordance with the following formula:

$$\left[A = 3\Phi \left(\frac{t-s}{t} \right) \right.$$

in which "A" is the amount the United States is entitled to recover; "Φ" is the sum of the amounts paid under this subchapter or on behalf of the participant and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; "t" is the total number of months in the participant's period of obligated service, including any additional period of obligated service in accordance with section 4143(b)(4)(B) of this subchapter; and "s" is the number of months of such period served by the participant in accordance with section 4143 of this title. Any amount of damages which the United States is entitled to recover under this section will, within the one-year period beginning on the date of the breach of the written contract, be paid to the United States.

[(d)(1) Any obligation under the Scholarship Program (or a written contract thereunder) of a participant in the Scholarship Program for service or payment of damages shall be canceled upon the death of the participant.

[(2) The Administrator shall prescribe regulations providing for the waiver or suspension of any obligation of a participant for service or payment under such Program (or a contract thereunder) whenever compliance by the participant is impossible due to circumstances beyond the control of the participant or whenever the Administrator determines that the waiver or suspension of compliance would be in the best interest of the Veterans' Administration.

[(3) Any obligation of a participant under such Program (or a contract thereunder) for payment of damages may not be released by a discharge in bankruptcy under title 11 before the expiration of the five-year period beginning on the first date that payment of such damages is due.

[(e) The Administrator, in cooperation with and with the consent of the heads of other relevant departments and agencies and with the consent of the participant or individual involved, may permit—

> [(1) any period of obligated service required to be performed under this subchapter to be performed in another Federal department or agency or in the Armed Forces; and
>
> [(2) any period of obligated service required to be performed in another Federal department or agency or in the Armed Forces under another Federal health personnel scholarship program to be performed in the Department of Medicine and Surgery.

[§ 4145. Exemption of scholarship payments from taxation

[Notwithstanding any other law, any payment to, or on behalf of a participant in the Scholarship Program for tuition, education expenses, or a stipend under this subchapter shall be exempt from taxation.

[§ 4146. Program subject to availability of appropriations

[The authority of the Administrator to make payments under this subchapter is effective for any fiscal year only to the extent that appropriated funds are available for such purposes.]

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CHAPTER 76—VETERANS' ADMINISTRATION HEALTH PROFESSIONAL EDUCATIONAL ASSISTANCE PROGRAM

SUBCHAPTER I—GENERAL

Sec.

4301. Establishment of program; purpose.

4302. Eligibility; application; written contract.
4303. Breach of contract; liability; waiver.
4304. Exemption of educational assistance payments from taxation.
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SUBCHAPTER II—VETERANS' ADMINISTRATION HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

4311. Duration of program.
4312. Eligibility; application; written contract.
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SUBCHAPTER III—VETERANS' ADMINISTRATION HEALTH PROFESSIONAL TUITION REIMBURSEMENT PROGRAM

4321. Eligibility; application; written contract.
4322. Obligated service.
4323. Breach of contract; liability.
4324. Allocation and distribution of funding.

SUBCHAPTER I—GENERAL

§ 4301. Establishment of program; purpose

There is hereby established a program to be known as the Veterans' Administration Health Professional Educational Assistance Program (hereinafter in this chapter referred to as the "Educational Assistance Program"), which shall comprise (1) a scholarship program as provided for in subchapter II of this chapter, to be known as the Veterans' Administration Health Professional Scholarship Program (hereinafter in this chapter referred to as the "Scholarship Program"), and (2) a tuition reimbursement program as provided for in subchapter III of this chapter, to be known as the Veterans' Administration Health Professional Tuition Reimbursement Program (hereinafter in this chapter referred to as the "Tuition Reimbursement Program"). The purpose of the Educational Assistance Program is to assist in providing an adequate supply of trained health-care personnel who provide either direct patient-care services or services incident to direct patient-care services for the Veterans' Administration and for the Nation.

§ 4302. Eligibility; application

(a) To be eligible to participate in the Educational Assistance Program, an individual, in addition to meeting the criteria specified in section 4312 of this title for participation in the Scholarship Program or in section 4321 of this title for participation in the Tuition Reimbursement Program, must—

(1) be accepted for enrollment or be currently enrolled as a student (A) in an accredited (as determined by the Administrator) educational institution in a State, and (B) in a course of training offered by such institution and approved by the Administrator, leading toward completion of any degree in an appropriate discipline (as determined by the Administrator);

(2) submit an application to the Administrator for participation in the Educational Assistance Program;

(3) sign and submit to the Administrator, at the time of submission of such application, a written contract (described in subsection (e) of this section) to accept payment of educational assistance and to serve a period of obligated service as provided

in section 4313 of this title for the scholarship program or in section 4322 of this title for the Tuition Reimbursement Program; and

(4) at the time of submission of such application, not be obligated under any other Federal program to perform service after completion of the course of study or program of such individual referred to in clause (1) of this subsection.

(b)(1) In distributing application forms and contract forms to individuals desiring to participate in the Educational Assistance Program, the Administrator shall include with such forms—

(A) a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Administrator, including in the summary a clear explanation of the damages to which the United States is entitled under section 4314 of this title with respect to the Scholarship Program or section 4323 of this title with respect to the Tuition Reimbursement Program, if the individual breaches the contract; and

(B) a full description of the terms and conditions that would apply to the individual's participation in the Educational Assistance Program and service in the Department of Medicine and Surgery.

(2) The Administrator shall make such application forms and other information available to individuals desiring to participate in the Educational Assistance Program on a date sufficiently early to allow such individuals adequate time to prepare and submit such forms.

(c) In selecting applicants for acceptance in the Educational Assistance Program, the Administrator, in addition to according priority as set forth in section 4312(b)(1) of this title with respect to the Scholarship Program or in section 4321(b) of this title with respect to the Tuition Reimbursement Program, shall give priority to the applications of individuals who have previously received educational assistance under this program and have not completed the program of education undertaken under such section.

(d)(1) An individual becomes a participant in the Educational Assistance Program only upon the Administrator's approval of the individual's application submitted under subsection (a)(2) of this section and the Administrator's acceptance of the contract signed by the individual under subsection (a)(3) of this section.

(2) The Administrator shall provide written notice to an individual promptly upon the Administrator's approval under paragraph (1) of this subsection of the individual's participation in the Educational Assistance Program.

(e) The written contract (referred to in subsection (a)(3) of this section) between the Administrator and a participant in the Educational Assistance Program, in addition to the provisions specified in section 4312(b) of this title with respect to the Scholarship Program or in section 4321(d) of this title with respect to the Tuition Reimbursement Program, shall contain—

(1)(A) subject to clause (2) of this subsection, the Administrator's agreement—

(i) to provide the participant with educational assistance as authorized in this chapter and specified in the agreement, and

(ii) to afford the participant the opportunity for employment in the Department of Medicine and Surgery (subject to the availability of appropriated funds for such purpose and other qualifications established in accordance with section 4105 of this title); and

(B) subject to clause (2) of this subsection, the participant's agreement—

(i) to accept such educational assistance;

(ii) to maintain enrollment and attendance in the course of training until completed; and

(iii) while enrolled in such course, to maintain an acceptable level of academic standing (as determined by the educational institution offering such course of training under regulations prescribed by the Administrator);

(2) a provision that any financial obligation of the United States arising out of a contract entered into under this chapter, and any obligation of the participant which is conditioned thereon, is contingent upon funds being appropriated for educational assistance under this chapter;

(3) a statement of the damages to which the United States is entitled under section 4314 of this title with respect to the Scholarship Program or section 4323 of this title with respect to the Tuition Reimbursement Program, for the participant's breach of the contract; and

(4) such other statements of the rights and liabilities of the Administrator and of the participant as may be appropriate and consistent with the provisions of this chapter.

(f) The maximum amount of (1) the monthly stipend paid to a participant in the Scholarship Program, specified in section 4312(d)(1)(B) of this title and as previously adjusted (if at all) in accordance with this subsection, and (2) the maximum amount of tuition reimbursement provided to a participant in the Tuition Reimbursement Program, specified in section 4321(e) of this title and as previously adjusted (if at all) in accordance with this subsection, shall be increased by the Administrator for each school year ending in a fiscal year beginning after September 30, 1988, by an amount (rounded to the next highest multiple of $1) equal to the amount of such stipend or tuition reimbursement multiplied by the overall percentage (as set forth in the report transmitted to the Congress under section 5305 of title 5) of the adjustment (if such adjustment is an increase) in the rates of pay under the General Schedule made effective in the fiscal year in which such school year ends.

(g) The Administrator shall report to Congress not later than March 1 of each year—

(1) the number of students receiving educational assistance under the Educational Assistance Program, broken down to show the numbers of students receiving assistance under the Scholarship Program and the Tuition Reimbursement Program separately, and the number of students enrolled in each type of health profession training under each program;

(2) the education institutions providing such training to students in each program;

(3) the number of applications filed under each program, by health profession category, during the school year beginning in such year and the total number of such applications so filed for all years in which the Educational Assistance Program (or predecessor program) has been in existence;

(4) the average amounts of educational assistance provided per participant in the Scholarship Program and per participant in the Tuition Reimbursement Program;

(5) the amount of tuition and other expenses paid, by health profession category, in the aggregate and at each educational institution for the school year beginning in such year and for prior school years;

(6) the number of scholarships accepted, by health profession category, during the school year beginning in such year and the number, by health profession category, which were offered and not accepted; and

(7) the number of participants who complete a course or course of training in each program each year and for all years such program (or predecessor program) has been in existence.

(h) The Administrator shall prescribe regulations to carry out the Educational Assistance Program.

§ 4303. Breach of contract; liability; waiver

(a)(1) Any obligation under the Educational Assistance Program (or a written contract thereunder) of a participant in the Educational Assistance Program for service or payment of damages shall be canceled upon the death of the participant.

(2) The Administrator shall prescribe regulations providing for the waiver or suspension of any obligation of a participant for service or payment under such Program (or a contract thereunder whenever compliance by the participant is impossible due to circumstances beyond the control of the participant or whenever the Administrator determines that the waiver or suspension of compliance would be in the best interest of the Veterans' Administration.

(3) Any obligation of a participant under such Program (or a contract thereunder) for payment of damages may not be released by a discharge in bankruptcy under title 11 before the expiration of the five-year period beginning on the first date the payment of such damages is due.

(b) The Administrator, in cooperation with and with the consent of the heads of other relevant departments and agencies and with the consent of the participant or individual involved, may permit—

(1) any period of obligated service required to be performed under this chapter to be performed in another Federal department or agency or in the Armed Forces; and

(2) any period of obligated service required to be performed in another Federal department or agency or in the Armed Forces under another Federal health personnel educational assistance program to be performed in the Department of Medicine and Surgery.

§ 4304. Exemption of educational assistance payments from taxation

Notwithstanding any other law, any payment to, or on behalf of a participant in the Educational Assistance Program, for tuition, education expenses, or a stipend under this chapter shall be exempt from taxation.

§ 4305. Program subject to availability of appropriations

The authority of the Administrator to make payments under this chapter is effective for any fiscal year only to the extent that appropriated funds are available for such purposes.

SUBCHAPTER II—VETERANS' ADMINISTRATION HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

§ 4311. Duration of program

The Administrator may not furnish scholarships to new participants in the Scholarship Program after September 30, 1992.

§ 4312. Eligibility; application; written contract

(a) To be eligible to participate in the Scholarship Program, an individual, in addition to meeting the requirements specified in section 4302 of this title, must be accepted for enrollment or be enrolled (as described in clause (1) of section 4302(a) of this title) as a full-time student, except that an individual who is a Veterans' Administration employee described in subsection (e)(1) of this section may be accepted as a participant if accepted for enrollment or enrolled (as described in clause (1) of section 4302(a) of this title) for study on less than a full-time but not less than a half-time basis. (Such a participant is hereinafter in this subchapter referred to as a "part-time student".)

(b)(1) In selecting applicants who are pursuing a course of training in nursing for acceptance in the Scholarship Program, the Administrator, in addition to according priorities as set forth in section 4302(c) of this title, shall give priority to the applications of individuals who have completed three years of a four-year course of training leading to a baccalaureate degree.

(2) Before awarding the initial scholarship in any course of training other than in medicine or nursing, the Administrator, not less than sixty days before awarding such scholarship, shall notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the Administrator's intent to award a scholarship in such course of training and of the reasons why the award of scholarships in such course of training is necessary to assist in providing for the Veterans' Administration an adequate supply of personnel in the health profession concerned.

(c) The written contract referred to in section 4302(a)(3) of this title between the Administrator and a participant in the Scholarship Program, in addition to the requirements set forth in such section, shall contain—

> *(1) the Administrator's agreement, subject to section 4302(e)(2) of this title, to provide the participant with a scholarship (described in subsection (d) of this section) for from one to four school years (or in a case in which an extension is granted*

under subsection (e)(3) of this section, the number of school years provided for as a result of such extension) during which period the participant is pursuing a course of training described in section 4302(a)(1)(B) of this title; and

(2) subject to section 4302(e)(2) of this title, the participant's agreement—

(A) to serve as a full-time employee in the Department of Medicine and Surgery for a period of time (hereinafter in this subchapter referred to as the "period of obligated service") of two calendar years for each school year or part thereof for which the participant was provided a scholarship under the Scholarship Program (to be reduced, in the case of a participant who is a part-time student, in accordance with the proportion that the number of credit hours carried by such participant in any such school year bears to the number of credit hours required to be carried by a full-time student in the course of training being pursued by the participant, but in no event, to less than one year);

(B) if the participant's period of obligated service is deferred under section 4313(b)(3)(A)(i) of this title, to serve any additional period of obligated service prescribed by the Administrator under section 4313(b)(4)(B) of this title; and

(C) in the case of a participant who is a part-time student, to maintain employment, while enrolled in such course of training, as a Veterans' Administration employee permanently assigned to a Veterans' Administration health-care facility.

(d)(1) A scholarship provided to a participant in the Scholarship Program for a school year under a written contract under the Scholarship Program shall consist of—

(A) payment to, or (in accordance with paragraph (2) of this subsection) on behalf of, the participant of the amount of—

(i) the tuition of the participant in such school year; and

(ii) other reasonable educational expenses, including fees, books, and laboratory expenses; and

(B) payment to the participant of a stipend of not in excess of $485 per month (adjusted in accordance with section 4302(f) of this title) for each of the twelve consecutive months beginning with the first month of such school year, except that a stipend may not be paid to a participant who is a full-time employee of the Veterans' Administration and the stipend of a participant who is a part-time student shall be adjusted as provided in subsection (e)(2) of this section.

(2) The Administrator may contract with an educational institution in which a participant in the Scholarship Program is enrolled for the payment to the educational institution of the amounts of tuition and other reasonable educational expenses described in paragraph (1)(A) of this subsection. Payment to such an educational institution may be made without regard to subsections (a) and (b) of section 3324 of title 31.

(e)(1) To be accepted as a participant as a part-time student, an individual must be a full-time Veterans' Administration employee permanently assigned to a Veterans' Administration health-care facility on the date on which such individual submits the application

referred to in subsection (a)(2) of section 4302 of this title and on the date on which such individual becomes a participant in the Scholarship Program.

(2) If a participant in the Scholarship Program is awarded a scholarship as a part-time student—

(A) the maximum amount of the stipend payable to such participant under subsection (d)(1)(B) of this section shall be reduced in accordance with the proportion that the number of credit hours carried by such participant bears to the number of credit hours required to be carried by a full-time student in the course of training being pursued by the participant; and

(B) a stipend may not be paid to such a participant under such subsection for any month during which such participant is not actually attending the course of training in which such participant is enrolled.

(3) In the case of a participant who is a part-time student, the Administrator may extend the scholarship award period to a maximum of 6 school years if the Administrator determines that such an extension would be in the best interest of the United States.

(f) Notwithstanding any other provision of law, participants in the Scholarship Program shall not by virtue of their participation in such program (1) be considered to be employees of the Federal Government, or (2) be counted against any personnel ceiling affecting the Department of Medicine and Surgery.

§4313. Obligated service

(a) Each participant in the Scholarship Program shall provide service in the full-time clinical practice of such participant's profession or in another health-care position, in an assignment or location as determined by the Administrator, as a full-time employee of the Veterans' Administration for the period of obligated service provided in the contract of such participant entered into under section 4302(a)(3) of this title.

(b)(1) Not later than sixty days prior to (A) the date described in paragraph (3) of this subsection with respect to a participant in the Scholarship Program who is a full-time student, or (B) the date provided for under paragraph (5) of this subsection with respect to a participant who is a part-time student, the Administrator shall notify the participant of the date described in the applicable such paragraph for the beginning of such participant's period of obligated service.

(2) As soon as possible after the applicable date described in paragraph (3) of this subsection or provided for under paragraph (5) of this subsection, the Administrator shall—

(A) in the case of a participant who is not a full-time employee in the Department of Medicine and Surgery, appoint such participant as such an employee; and

(B) in the case of a participant who is such an employee but is not serving in a position for which such participant's course of training prepared such participant, assign such participant to such a position.

(3)(A)(i) With respect to a participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, the date for the beginning of the participant's period of obligated serv-

ice is the date upon which the participant becomes licensed to practice medicine, osteopathy, dentistry, optometry, or podiatry, as the case may be, in a State, except that the Administrator may, at the request of such participant, defer such date until the end of the period of time required for the participant to complete an internship or residency or other advanced clinical training. If the participant requests such a deferral, the Administrator shall notify the participant that such deferral could lead to an additional period of obligated service in accordance with paragraph (4) of this subsection.

(ii) No such period of internship or residency or other advanced clinical training shall be counted toward satisfying a period of obligated service under this subchapter.

(B) With respect to a participant receiving a degree from a school of nursing, the date for the beginning of the participant's period of obligated service is the later of (i) the date upon which the participant completes such participant's courses of training, or (ii) the date upon which the participant becomes registered as a graduate nurse in a State.

(C) With respect to a participant receiving a degree from an institution other than a school of medicine, osteopathy, dentistry, optomerty, podiatry, or nursing, the date for the beginning of the participant's period of obligated service is the date upon which the participant completes the course of training leading to such degree.

(4) Any participant whose period of obligated service is deferred under paragraph (3)(A) of this subsection—

(A) shall be required to undertake internship or residency or other advanced clinical training in an accredited program in an educational institution which is an affiliated institution (as defined in section 4108(c)(1) of this title) and with respect to which the affiliation agreement provides that all or part of the internship or residency or other advanced clinical training will be undertaken in a Veterans' Administration health-care facility; and

(B) may, at the discretion of the Administrator and upon the recommendation of the Chief Medical Director, incur an additional period of obligated service—

(i) at the rate of one-half of a calendar year for each year of internship or residency or other advanced clinical training (or a proportionate ratio thereof), if the internship, residency, or advanced clinical training is in a medical specialty necessary to meet the health care requirements of the Veterans' Administration (as determined under regulations prescribed by the Administrator); or

(ii) at the rate of three-quarters of a calendar year for each year of internship or residency or other advanced clinical training (or a proportionate ratio thereof), if the internship, residency, or advanced clinical training is not in a medical specialty necessary to meet the health care requirements of the Veterans' Administration (as determined under regulations prescribed by the Administrator).

(5) The Administrator shall by regulation prescribe the date for the beginning of the period of obligated service of a participant who was a part-time student. Such regulations shall prescribe terms as

similar as practicable to the terms set forth in paragraph (3) of this subsection.

(c)(1) Except as provided in paragraph (2) of this subsection, a participant in the Scholarship Program shall be considered to have begun serving such participant's period of obligated service—

(A) on the date, after such participant's course completion date, on which such participant (in accordance with subsection (a) of this section) is appointed under this chapter as a full-time employee in the Department of Medicine and Surgery; or

(B) if the participant is a full-time employee in the Department of Medicine and Surgery on such course completion date, on the date thereafter on which such participant is assigned to a position for which such participant's course of training prepared such participant.

(2) A participant in the Scholarship Program who on such participant's course completion date is a full-time employee in the Department of Medicine and Surgery serving in a capacity for which such participant's course of training prepared such participant shall be considered to have begun serving such participant's period of obligated service on such course completion date.

(3) For the purposes of this subsection, the term "course completion date" means the date on which a participant in the Scholarship Program completes such participant's course of training under the program.

§ 4314. Breach of contract; liability

(a) A participant in the Scholarship Program (other than a participant described in subsection (b) of this section) who fails to accept payment, or instructs the educational institution in which the participant is enrolled not to accept payment, in whole or in part, of a scholarship under the contract entered into under section 4302(a)(3) of this title, shall, in addition to any period of obligated service or other obligation or liability under the contract, be liable to the United States for the amount of $1,500 as liquidated damages.

(b) A participant in the Scholarship Program who—

(1) fails to maintain an acceptable level of academic standing in the educational institution in which the participant is enrolled (such level determined by the educational institution under regulations prescribed by the Administrator),

(2) is dismissed from such education institution for disciplinary reasons,

(3) voluntarily terminates the course of training in such educational institution before the completion of such course of training,

(4) fails to become licensed to practice medicine, osteopathy, dentistry, podiatry, or optometry in a State, fails to become registered as a graduate nurse in a State, or fails to meet any applicable licensure requirement in the case of any other health-care personnel who provide either direct patient-care services or services incident to direct patient-care services, during a period of time determined under regulations prescribed by the Administrator, or

(5) in the case of a participant who is a part-time student, fails to maintain employment, while enrolled in the course of

training being pursued by such participant, as a Veterans' Administration employee permanently assigned to a Veterans' Administration health-care facility,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to or on behalf of the participant under the contract.

(c) If a participant in the Scholarship Program breaches the written contract by failing (for any reason) to complete such participant's period of obligated service, the United States shall be entitled to recover from the participant an amount determined in accordance with the following formula:

$$A = 3\Phi\left(\frac{t-s}{t}\right)$$

in which "A" is the amount the United States is entitled to recover; "Φ" is the sum of the amounts paid under this subchapter or on behalf of the participant and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; "t" is the total number of months in the participant's period of obligated service, including any additional period of obligated service in accordance with section 4313(b)(4)(B) of this title; and "s" is the number of months of such period served by the participant in accordance with section 4313 of this title. Any amount of damages which the United States is entitled to recover under this section will, within the one-year period beginning on the date of the breach of the written contract, be paid to the United States.

SUBCHAPTER III—VETERANS' ADMINISTRATION HEALTH PROFESSIONAL TUITION REIMBURSEMENT PROGRAM

§ 4321. Eligibility; application; written contract

(a) To be eligible to participate in the Tuition Reimbursement Program, an individual, in addition to meeting the requirements specified in section 4302 of this title, must—

(1) be a full-time Veterans' Administration Nursing Service employee permanently assigned to a Veterans' Administration health-care facility and be enrolled in a course of training offered by an institution approved by the Administrator leading toward completion of (A) an associate or higher degree in nursing or (B) a masters or doctoral degree in a field related to nursing; or

(2) if the Administrator determines that it is necessary to assist in providing for the Veterans' Administration an adequate supply of personnel in any other health profession, be a full-time Veterans' Administration employee in such profession providing either direct patient-care services incident to direct patient-care services who is permanently assigned to a Veterans' Administration health-care facility and be enrolled in a course

of training offered by such an institution, and approved by the Administrator, leading toward completion of a masters or doctoral degree in an appropriate field.

(b)(1) In selecting applicants described in paragraph (1) of subsection (a) of this section for acceptance in the Tuition Reimbursement Program, the Administrator, in addition to according priorities as set forth in section 4302(c) of this title, shall give priority, in the following order, to the applications of (A) individuals who have been employed as a full-time Veterans' Administration Nursing Service employee for at least 2 years and have demonstrated superior proficiency and performance, as determined by the Chief Nurse of the facility at which the individual is employed, in consultation with the local career development committee, (B) individuals who have been employed as a full-time Veterans' Administration Nursing Service employee for at least 2 years, and (C) individuals who have previously received tuition reimbursement under the Tuition Reimbursement Program.

(2) In selecting employees described in paragraph (2) of subsection (c) of this section for acceptance in the Tuition Reimbursement Program, the Administrator, in addition to according priorities as set forth in section 4302(c) of this title, shall give priority, in the following order, to the applications of (A) individuals who have been employed as a full-time Veterans' Administration employee in the health profession concerned for at least 2 years and have demonstrated superior proficiency and performance, as determined by the appropriate supervisory employee in the same health profession at the facility at which the individual is employed, in consultation with the local career development committee, (B) individuals who have been employed as a full-time Veterans' Administration employee in the health profession concerned for at least 2 years, and (C) individuals who have previously received tuition reimbursement under the Tuition Reimbursement Program.

(c) Before approving tuition reimbursement assistance in any course of training other than nursing, the Administrator, not less than 60 days before awarding such assistance, shall notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the Administrator's intent to award assistance in such course of training and of the reasons why the award of such assistance in such course of training is necessary to assist in providing for the Veterans' Administration an adequate supply of personnel in the health profession concerned.

(d) The written contract referred to in section 4302(a)(3) of this title between the Administrator and participant in the Tuition Reimbursement Program, in addition to the requirements set forth in such section, shall contain—

(1) the Administrator's agreement, subject to section 4302(e)(2) of this title, to provide the participant with tuition reimbursement following successful completion (as determined, pursuant to regulations prescribed by the Administrator, by the educational institution involved) of (i) a course or courses required for the course of study described in subsection (a)(1)(B) of this section, or (ii) a course or courses taken as necessary prerequisites for degree program enrollment if a letter regarding the potential enrollment of the participant from an appropriate official of the

institution involved includes a statement specifying such prerequisites; and

(2) subject to section 4302(e)(2) of this title, the participant agrees—

(A) to maintain employment while enrolled in the course of training being pursued by such participant, as a full-time Veterans' Administration employee permanently assigned to a Veterans' Administration health-care facility; and

(B) to continue to serve as a full-time employee in the Department of Medicine and Surgery for one year (hereinafter in this subchapter referred to as the "period of obligated service") after completion of the course for which the participant received tuition reimbursement.

(e) Tuition reimbursement provided to a participant in the Tuition Reimbursement Program shall not exceed $2,000 per year (adjusted in accordance with section 4302(f) of this title).

(f) The Administrator may contract with an educational institution pursuant to which such an institution would provide a course or courses at a Veterans' Administration health-care facility to participants in the Tuition Reimbursement Program. Pursuant to the contract, the Administrator may agree to pay to the institution an amount not in excess of an amount determined by multiplying the number of participants in such a course by the amount of tuition reimbursement each participant would receive for enrolling and successfully completing such course.

§ 4322. Obligated service

(a) Each participant in the Tuition Reimbursement Program shall provide service in the full-time clinical practice of such participant's profession as a full-time employee of the Veterans' Administration for the period of obligated service provided in the contract of such participant entered under section 4302(a)(3) of this title.

(b) A participant who on such participant's course completion date is a full-time employee in the Department of Medicine and Surgery shall be considered to have begun serving such participant's period of obligated service on the course completion date.

(c) Except in the case of a participant whose tuition was paid pursuant to section 4321(f) of this title, if a participant in the Tuition Reimbursement Program fails to successfully complete a course, no reimbursement will be provided and no period of obligated service will be incurred.

(d) In the case of a participant whose tuition was paid pursuant to section 4321(f) of this title and who fails to complete the course involved, the period of obligation shall be of the same duration as it would have been if the participant had successfully completed the course and the course completion date shall be considered to be the date on which the participant's failure becomes an established fact.

(e) For the purposes of this subsection, the term "course completion date" means the date on which a participant in the Tuition Reimbursement Program completes such participant's course of training under the program.

§ 4323. Breach of contract; liability

(a) A participant in the Tuition Reimbursement Program who fails to maintain employment as a Veterans' Administration employee permanently assigned to a Veterans' Administration health-care facility—

(1) shall not receive reimbursement for tuition for the course or courses in which the participant is enrolled; and

(2) in lieu of any service obligation arising from completion of a course or courses in a previous semester or quarter, shall be liable to the United States for the amount which has been paid to or on behalf of the participant under the contract.

(b) If a participant in the Tuition Reimbursement Program breaches the written contract by failing (for any reason) to complete such participant's period of obligated service, the United States shall be entitled to recover from the participant an amount determined in accordance with the following formula:

$$A = 3\,\Phi\left(\frac{t-s}{t}\right)$$

in which "A" is the amount the United States is entitled to recover; "Φ" is the sum of the amount paid under this subchapter or on behalf of the participant and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; "t" is the total number of months in the participant's period of obligated service; and "s" is the number of months of such period served by the participant in accordance with section 4322 of this title. Any amount of damages which the United States is entitled to recover under this section will, within the one-year period beginning on the date of the breach of the written contract, be paid to the United States.

§ 4324. Allocation and distribution of funding

In determining the amount of funding to allocate to Veterans' Administration health-care facilities in connection with the Tuition Reimbursement Program, the Administrator shall take into account (1) the personnel ceiling for nursing personnel, and (2) the recruitment and retention needs of that facility, as determined by the Administrator.

PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

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CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY

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SUBCHAPTER II—PROCUREMENT AND SUPPLY

5021. Revolving supply fund.
5022. Authority to procure and dispose of property and to negotiate for common services.
5023. Procurement of prosthetic appliances.
5024. Grant of easements in Government-owned lands.
5025. Procurement of medical and pharmaceutical items.

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SUBCHAPTER I—ACQUISITION AND OPERATION OF MEDICAL FACILITIES

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§ 5004. Congressional approval of certain medical facility acquisitions

(a)(1) * * *

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[(2) After the adoption by the committees during a fiscal year of resolutions with identical texts approving major medical facility projects, it shall not be in order in the House of Representatives or in the Senate to consider a bill, resolution, or amendment making an appropriation for that fiscal year or for the next fiscal year which may be expended for a major medical facility project—

[(A) if the project for which the appropriation is proposed to be made is not approved in those resolutions; or

[(B) in the event that the project is approved in the resolutions, if either—

[(i) the bill, resolution, or amendment making the appropriation does not specify—

[(I) the medical facility project for which the appropriation is proposed to be made; and

[(II) the amount proposed to be appropriated for the project; or

[(ii) the amount proposed to be appropriated for the project (when added to any amount previously appropriated for the project) exceeds the amount approved for the project.]

(2)(A) It shall not be in order in the Senate or in the House of Representatives to consider a bill, resolution, or amendment which would make an appropriation for any fiscal year which may be expended for a major medical facility project unless (i) such bill, resolution, or amendment specifies the amount to be appropriated for such project, and (ii) the amount to be appropriated for such project is no more than the amount authorized, by a provision of law enacted in legislation which had been reported from the committees, to be appropriated for such project for that fiscal year.

(B) It shall not be in order in the Senate or in the House of Representatives to consider a bill, resolution, or amendment which would make an appropriation which may be expended for a major medical facility lease unless such appropriation for such lease is authorized by a provision of law enacted in legislation which had been reported from the committees.

[(3) No appropriation may be made for the lease of any space for use as a medical facility at an average annual rental of more than $500,000 unless each committee has first adopted a resolution approving such lease and setting forth the estimated cost thereof.

[(4) For the purpose of this subsection, the term major medical facility project means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than $2,000,000. Such term does not include an acquisition by exchange.]

(3) For the purpose of this subsection—

(A) the term "major medical facility project" means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than $2,000,000, but such term does not include an acquisition by exchange; and

(B) the term "major medical facility lease" means a lease for space for use as a medical facility at an average annual rental of more than $500,000.

* * * * * * *

[(c) The estimated cost of any construction, alteration, lease, or other acquisition that is approved under this section, as set forth in the pertinent resolutions described in subsection (a) of this section, may be increased by the Administrator in the contract for such construction, alteration, lease, or other acquisition by an amount equal to the percentage increase, if any, as determined by the Administrator, in construction, alteration, lease, or other acquisition costs, as the case may be, from the date of such approval to the date of contract, but in no event may the amount of such increase exceed 10 per centum of such estimated cost.]

(c) The amount obligated for any construction project, alteration project, or acquisition project that is authorized by a law described in subsection (a)(2)(A) of this section shall not exceed by more than 10 percent the amount authorized for such construction, alteration, or acquisition project in such law unless the Administrator, not less than 30 days before obligating any amount that would cause the amount so authorized for the project to be exceeded by more than 10 percent, provides the committees with notice of the Administrator's intention to do so and the reasons for doing so.

[(d) In the case of any medical facility approved for construction, alteration, lease, or other acquisition by each committee under subsection (a) of this section for which funds have not been appropriated within one year after the date of such approval, either such committee may by resolution rescind its approval at any time thereafter before such funds are appropriated.]

[(e)] *(d)* In any case in which the Administrator proposes that funds be used for a purpose other than the purpose for which such funds were appropriated, the Administrator shall promptly notify each committee, in writing, of the particulars involved and the reasons why such funds were not used for the purpose for which appropriated.

[(f)] *(e)* The Administrator may accept gifts or donations for any of the purposes of this subchapter.

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SUBCHAPTER II—PROCUREMENT AND SUPPLY

* * * * * * *

§ 5025. Procurement of medical and pharmaceutical items

(a) Except as provided in subsections (b) and (c) of this section, the Administrator shall procure medical and pharmaceutical items only under national contracts.

(b)(1)(A) Except as provided in subparagraph (B) of this paragraph, a medical or pharmaceutical item for use by the Veterans' Administration may be procured under a local contract instead of a national contract awarded by the Veterans' Administration only if—

(i) the procurement is within the limits prescribed in paragraph (2) of this subsection, and

(ii)(I) the item is not available for procurement under a national contract, or

(II) procurement of the item by a local contract is necessary for the effective furnishing of health-care services or the conduct of a research or education program at a Veterans' Administration medical center, as determined by the director of the center in accordance with regulations which the Chief Medical Director shall prescribe.

(B)(i) Subparagraph (A) of this paragraph shall not apply to an emergency procurement.

(ii) In the case of the need for an emergency procurement of a medical or pharmaceutical item, no greater quantity of such item may be procured by a local contract than is reasonably necessary to meet the emergency need and the reasonably foreseeable need for the item at the medical center concerned until resupply can be achieved through procurement actions other than emergency procurement.

(2)(A)(i) Except as provided in division (iii) of this subparagraph and in subparagraph (B) of this paragraph, not more than 20 percent of the total of all medical and pharmaceutical items procured by the Veterans' Administration in any fiscal year (measured as a percent of the total cost of all such medical and pharmaceutical items procured by the Veterans' Administration in that fiscal year) may be procured under local contracts.

(ii) Local contracts for the procurement of medical or pharmaceutical items shall, to the maximum extent feasible, be awarded to regular dealers or manufacturers engaged in the wholesale supply of medical and pharmaceutical items.

(iii) The President may increase for a fiscal year the percentage specified in subparagraph (A) of this section to a percentage not greater than 30 percent if the President, based on the experience of the Veterans' Administration during the 2 fiscal years preceding such fiscal year, determines that the increase and the amount of the increase are necessary in the interest of the effective furnishing of health-care services by the Veterans' Administration. The authority to increase such percentage may be delegated only to the Director of the Office of Management and Budget and may not be redelegated.

(B) Items procured through an emergency procurement shall not be counted for the purpose of this paragraph.

(c) Any provision of law that is inconsistent with subsection (a) or (b) of this section shall not apply, to the extent of the inconsistency, to the procurement of a medical or pharmaceutical item for use by the Veterans' Administration.

(d)(1) Not later than December 1 of each fiscal year (beginning on December 1, 1988), the director of each Veterans' Administration medical center shall transmit to the Administrator a report containing a list indicating the quantity, and the cost therefor, of each medical and pharmaceutical item procured at that medical center under a local contract during the preceding fiscal year.

(2) Not later than February 1 of each year (beginning on February 1, 1989), the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the experience in carrying out the provisions of this section during the most recent fiscal year.

(e) For the purposes of this section:

(1) The term "emergency procurement" means a procurement necessary to meet an emergency need, affecting the health or safety of a veteran being furnished health-care services by the Veterans' Administration, for a medical or pharmaceutical item.

(2) The terms "medical or pharmaceutical item" and "medical and pharmaceutical items" include any item (in the case of the former term) or items (in the case of the latter term) listed in, or (as determined by the Administrator) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 65, 66, 73, or 89 in the document published by the Veterans' Administration, dated April 1986, and entitled "Federal Supply Catalog, Centrally Managed Items", or the document published by the Veterans' Administration, dated October 1985, and entitled "Federal Supply Catalog, Nondepot Items", but does not include any surgical instruments.

SUBCHAPTER III—STATE HOME FACILITIES FOR FURNISHING DOMICILIARY, NURSING HOME, AND HOSPITAL CARE

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§ 5035. Applications with respect to projects; payments

(a) * * *

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(b)(1) * * *

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(4) The Administrator shall establish a list of approved [projects,] *projects (including projects that have been conditionally approved under paragraph (6) of this subsection),* in the order of their priority, as of [July 1] *September 30* of each year. The Administrator shall award grants in the order of their priority on the list during the fiscal year beginning on October 1 of the calendar year in which the list was made.

* * * * * * *

(6)(A) The Administrator may conditionally approve a project, conditionally award a grant for the project under this section, and obligate funds for the grant if the Administrator determines that the project drawings and specifications submitted with the application for the grant are at least 80 percent complete and that the State submitting the application will meet all the requirements referred to in paragraph (1)(A) of this subsection not later than 180 days after the date on which the Administrator conditionally approves the project. The Administrator may finalize the award of the grant and pay the amount of the grant to such State only if the State has met all of such requirements.

(B) If a State does not take the action necessary to meet all of the requirements referred to in paragraph (1)(A) of this subsection not later than 180 days after the date on which the Administrator conditionally approves the application, the Administrator shall rescind the award of a grant to the State in connection with the application and shall deobligate the funds previously obligated in connection with the application.

(7)(A) Subject to subparagraph (B) of this paragraph, the Administrator may increase the amount of any grant awarded to any State for a project under this section by an amount by which the Administrator determines that the estimated cost of the construction or acquisition has increased from the estimated cost on which the Administrator based the determination to award the grant, without regard to the position of such project on the list established under paragraph (4) of this subsection, if the Administrator determines that the grant was awarded before the State entered into a contract for the construction or acquisition provided for in such project.

(B) A grant may not be increased under subparagraph (A) of this paragraph by more than 10 percent of the amount of the grant initially awarded for such project, and the amount of such grant, as increased, may not exceed 65 percent of the cost of the project.

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VETERANS' HEALTH CARE AMENDMENTS OF 1979

(Public Law 96-22, June 13, 1979)

* * * * * * *

TITLE II—CONTRACT-CARE PROGRAMS

DEFINITION OF "VETERANS' ADMINISTRATION FACILITIES"

SEC. 201. (a) * * *

* * * * * * *

(b) Not later than February 1, 1980, and annually thereafter, the Chief Medical Director of the Veterans' Administration shall submit to the appropriate committees of the Congress, through the Administrator of Veterans' Affairs, a full report on the implementation of [section 601(4)(C)(v) of title 38, United States Code, and the amendments made by this section, and on the numbers of veterans provided contract treatment (and the average cost and duration thereof) in each State (as defined in section 101(20) of title 38, United States Code) in the categories described in the following provisions of such title: sections 601(4)(C), 610(a), 612(a), 612(f)(1)(A), 612(f)(1)(B), 612(f)(2), 612(g), 612A (as added by section 103(a)(1) of this Act), the third sentence of section 612(f) (as added by section 102(b)(2) of this Act), and section 620A (as added by section 104(a) of this Act).] *sections 603 and 620 of title 38, United States Code, and on the numbers of veterans provided contract treatment (and the average cost and duration thereof) in each State (as defined in section 101(20) of title 38, United States Code) in each of the categories described in—*

(1) the following provisions of subsection (a) of such section 603: subclauses (A) and (B) of clause (1); subclauses (A), (B), and (C) of clause (2); clause (3); clause (4); clause (5), with a breakdown showing inpatient care and outpatient treatment separately; clause (6); clause (7); and clause (8) (as added by section 302 of this Act), with a breakdown showing inpatient care and outpatient treatment separately; and

(2) subsections (a) and (f) of such section 620.

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CONTINUING APPROPRIATIONS FOR FISCAL YEAR 1983

(Public Law 97-377, December 21, 1982)

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TITLE V—GENERAL PROVISIONS

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

* * * * * * *

Government National Mortgage Association

SPECIAL ASSISTANCE FUNCTIONS FUND

* * * * * * *

(INCLUDING TRANSFER OF FUNDS)

* * * * * * *

Sec. 156. (a)(1) The head of the agency shall pay each month an amount determined under paragraph (2) to a person—

(A) who is the surviving spouse of a member or former member of the Armed Forces described in subsection (c);

(B) who has in such person's care a child of such member or former member who has attained sixteen years of age but not eighteen years of age and is entitled to a child's insurance benefit under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) for such [month;] *month or who meets the require-*

ments for entitlement to the equivalent of such benefit provided under section 412(a) of title 38, United States Code; and

(C) who is not entitled for such month to a mother's insurance benefit under section 202(g) of the Social Security Act (42 U.S.C. [402(g))] *402(g)), or to the equivalent of such benefit based on meeting the requirements of section 412(a) of title 38, United States Code,* by reason of having such child (or any other child of such member or former member) in her care.

* * * * * * *

VETERANS' DIOXIN AND RADIATION EXPOSURE COMPENSATION STANDARDS ACT

(Public Law 98–542, October 24, 1984)

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ADVISORY COMMITTEE ON ENVIRONMENTAL HAZARDS

SEC. 6. (a) * * *

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(d)(1) * * *

* * * * * * *

(3) The Council shall make findings and evaluations regarding pertinent scientific studies and shall submit to the [Committee and the Administrator] *Committee, the Administrator, and the Committees on Veterans' Affairs of the Senate and House of Representatives* directly periodic reports on such findings and evaluations.

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VETERANS' HEALTH-CARE AMENDMENTS OF 1986

(Public Law 99–272, April 7, 1986)

* * * * * * *

SEC. 19032. ADVISORY COMMITTEE ON NATIVE-AMERICAN VETERANS.

(a) * * *

* * * * * * *

(b) DUTIES.—The Committee shall examine and evaluate programs and other activities of the Veterans' Administration with respect to the needs of veterans who are Native Americans, including American [Indians and] *Indians,* Alaska [Natives.] *Natives, and Native Hawaiians.* Such examination and evaluation shall include—

(1) an assessment of the needs of such veterans with respect to health care, rehabilitation, readjustment counseling, out-

reach services, and other benefits and services under programs administered by the Veterans' Administration; and

(2) a review of the manner in which and the extent to which the programs and other activities of the Veterans' Administration meet such needs.

(c) Members.—The Committee shall consist of—

(1) the Secretary of Labor (or a representative of the Secretary of Labor designated by the Secretary after consultation with the Assistant Secretary of Labor for Veterans' Employment);

(2) the Chief Medical Director and Chief Benefits Director of the Veterans' Administration or their representatives; and

(3) members appointed by the Administrator from the general public, including—

(A) representatives of veterans who are Native Americans, including American [Indians and] *Indians,* Alaska [Natives] *Natives, and Native Hawaiians,* and such veterans with service-connected disabilities; and

(B) individuals who are recognized authorities in fields pertinent to the needs of such veterans, including the specific health-care needs of such veterans and the furnishing of health-care services by the Veterans' Administration to such veterans.

* * * * * * *

(f) Reports.—(1) Not later than February 1, 1987, [and] February 1, 1988, *and February 1, 1989,* the Committee shall submit to the Administrator a report containing the findings and any recommendations of the Committee regarding the matters described in subsection (b) that were examined and evaluated by the Committee during the preceding fiscal year.

* * * * * * *

[(g) Alaska Native Defined.—For the purposes of this section, the term "Alaska Native" has the meaning given the term "Native" in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).]

(g) Definitions.—For the purposes of this section—

(1) the term "Alaska Native" has the meaning given the term "Native" in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)); and

(2) the term "Native Hawaiian" has the same meaning given that term in section 813(3) of the Native American Programs Acts of 1974 (42 U.S.C. 2992c(3)).

(h) Termination.—The Committee shall terminate 90 days after the date on which the [second] *third* report is transmitted by the Committee pursuant to subsection (f)(2).

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VETERANS' BENEFITS IMPROVEMENT AND HEALTH-CARE AUTHORIZATION ACT OF 1986

(Public Law 99–576, October 28, 1986)

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TITLE II—HEALTH CARE AND MEDICAL FACILITIES

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Part D—Miscellaneous

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[SEC. 234. PROHIBITION AGAINST EXCESSING OF CERTAIN VETERANS' ADMINISTRATION PROPERTIES.

[(a) In General.—The Administrator of Veterans' Affairs may not take any action before January 1, 1988, in connection with declaring as excess to the needs of the Veterans' Administration, transferring to another Federal agency, or otherwise relinquishing any Veterans' Administration interest in or disposing of any portion of the real property described in subsection (b). Any such action taken before the date of the enactment of this Act shall be without effect. If on the date of the enactment of this Act, such property (or any portion thereof) is under the jurisdiction of an agency of the United States other than the Veterans' Administration, such property shall revert back to the jurisdiction of the Veterans' Administration.

[(b) Description of Property.—The property referred to in subsection (a) is certain land and improvements at the Veterans' Administration Medical Center, West Los Angeles, California (consisting of approximately 109 acres), and at the Veterans' Administration Medical Center, Sepulveda, California (consisting of approximately 46 acres), described in letters dated February 5, 1986 (and enclosed maps), submitted by the Administrator to the Committees on Veterans' Affairs of the Senate and House of Representatives pursuant to section 5022(a)(2) of title 38, United States Code.]

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